



OMBUDSMAN
— NHRI SAMOA

SHADOW REPORT ON THE STATUS OF WOMEN IN SAMOA TO UN CEDAW COMMITTEE - 6TH PERIODIC REPORT OF STATE PARTY

Samoa Office of the
Ombudsman/ National Human
Rights Institution

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INTRODUCTION

1. For ease of reference, the Samoa Office of the Ombudsman/ National Human Rights Institution's (**NHRI Samoa**) submission is structured based on the "List of issues in relation to the sixth periodic report of Samoa document" (**Document**) issued by the Committee on 16 March 2018 (CEDAW/C/WSM/Q/6). The submission does not comment on all issues contained in the Document but only on issues that NHRI Samoa believes should be considered as soon as possible by the Samoan Government to further promote and protect the rights of women and girls in Samoa.
2. Firstly, NHRI Samoa acknowledges that Samoa has come a long way and has made significant progress towards meeting its obligations under CEDAW.¹ It highly commends efforts and measures implemented by the Government appropriate to the Samoan context (either legislative or non-legislative, or both), that work towards the elimination of discrimination against women and further advance women's rights in Samoa.
3. However, there is still room for improvement with Government consciously continuing to direct policy towards progressively removing discriminatory legislation and practices whilst taking into account Samoa's customs and traditions. Two of the most pressing issues which NHRI Samoa believes require urgent attention are family violence (where women continue to be subjected to different types of abuse); and the lack of participation in decision making (where women are systemically obstructed from decision making).
4. It is important to note that a majority of the issues discussed in this submission are addressed in detail (with recommendations) in NHRI Samoa's recently completed National Public Inquiry into Family Violence Report 2018 (**Inquiry**) which focused on women and girls and the impact of violence in the upbringing of children.²
5. The final report of the Inquiry has been completed and is now with Parliament for tabling.

CONTENT

Articles 2 & 3: Constitutional, legislative, policy and institutional framework

6. The establishment by the Government in 2013 of NHRI Samoa has enabled concrete steps to be taken in the promotion and protection of the human rights of women through awareness raising initiatives. These initiatives sought to put the relevance of human rights in context alongside the cultural and faith convictions of the Samoan community to promote greater appreciation of human rights and a rolling back of a settling attitude that "human rights" is an intruding foreign construct. Other activities include female detention facility inspections, the compilation of State of Human Rights Reports (**SHRR**) 2015, 2016, 2017 and the just completed Inquiry as SHRR 2018.

¹ Refer to Samoa Law Reform Commission, *CEDAW legislative Compliance Review Report*, 2016.

² Full list of Findings and Recommendations of the National Inquiry into Family Violence in Samoa Final Report 2018 can be found at Appendix A.

7. NHRI Samoa needs to work with the government authorities on modalities to press and follow up the implementation of SHRR recommendations after the submission of reports to Parliament.
8. The NHRI Samoa establishment is a small office comprised of 12 staff, only 4 of which deal primarily with the human rights mandate of the office. NHRI Samoa continues to face issues of human resources, limited budget and expertise in certain areas of human rights. These hamper NHRI Samoa's ability to effectively implement and monitor its work.

Article 2: Access to justice and remedies

9. NHRI Samoa acknowledges commendable progress achieved by the justice system in matters affecting women such as family violence. However, issues concerning access to justice, community awareness and the use of customary practices in sentencing require continuing attention.
10. Many victims of violence do not access the justice system in Samoa. Lack of awareness about services and laws prevent women from receiving the proper help they need. Other issues requiring continuing attention include the use of mediation without full risk assessments and lack of Monitoring and Evaluation to ensure no further harm is caused to the victim; as well as the use of character references and *ifoga* (traditional apology) as mitigating factors in sentencing. With respect to family violence the consideration of these, particularly the latter are problematic.
11. The objectivity of character references routinely sought by perpetrators is highly questionable. Traditional *ifoga* is invaluable in averting potential disruption to peace and harmony among community or kinship factions from events such as domestic violence. However, the situation of individual abused women vis a vis individual perpetrators run the risk of relegation to secondary consideration. Where the hammer is seen not to fall squarely upon the nail, injustice is felt, and inadequate accountability perceived, for abuse endured. In reality, harmful habitual perpetrator conduct may continue with impunity.
12. NHRI Samoa considers access to justice and the maintenance of adequate services standards would be greatly improved by the establishment of the often discussed Community Law Centre with adequate resources to meet the need for legal aid and advice. The Judiciary no doubt as a matter of course will consider the risk factors pertaining to the impact of *ifoga* and character reference mitigation on victims of family violence.
13. These issues are further discussed with recommendations in the Inquiry report (See **Recommendation 28**).

Article 3: National machinery for the advancement of women

14. Samoa's Ministry of Women Community and Social Development makes commendable efforts with the budget it is given to advance the role and rights of women in Samoa. However, to further advance and empower women in all areas of public, economic, social and political life, the Government needs to invest more than at present. The Inquiry report makes proposals to restructure the national machinery to deal more effectively with violence in Samoan homes (See **Recommendations 1, 8, 17, 19**). The adoption of these proposals will greatly benefit women in line with the objectives of CEDAW.

Article 5: Stereotypes and harmful practices

15. In the context of family violence, NHRI Samoa noted in its Inquiry report that stereotypical gender roles are taught from birth, reinforcing the patriarchal society, teaching girls to be subservient, encouraging sexual entitlement of boys, and creating an environment of impunity for perpetrators. Boys and girls are raised to expect different entitlements in life and to accept fixed ideals concerning their respective roles, duties and modes of behavior.
16. NHRI Samoa considers that in order to combat these issues, education on the harmful effects of gender stereotypes is key. There is need to promote a gender equal approach to parenting. Positive parenting programmes should highlight the undesirability of gender inequality and of raising children to expect different entitlements based on gender; and provide practical guidance on gender neutral modalities. These efforts also need to be supported by reforms in other areas such as in the media to capitalize on potentially positive impact the media can have in promoting gender equality.
17. Concern over the media increasing the risk of family violence by reinforcing the harmful gender stereotypes and gender inequality, as well as the prominence of sexual violence on TV/films, and increasing access to pornography is also highlighted in the Inquiry report. These are seen as leading to widespread acceptance of the sexual entitlement of men, and a general desensitization of society towards sexual, physical and emotional violence.
18. These issues are discussed with recommendations in the final report of the Inquiry (See **Recommendations 12, 16 and 25, 26**).

Articles 2 & 3: Gender-based violence against women

19. The prevalence of gender based violence and family violence in Samoa is of great concern and one which NHRI Samoa believes requires priority attention by the Government. Family violence as the Inquiry report points out, sits behind a veil of silence which allows for it to continue affecting society, particularly women and girls and children, and other vulnerable groups (i.e. persons with disabilities, the elderly, persons of diverse sexual orientation and gender characteristics (SOGISC persons) including lesbians, fa'atama and fa'afafine).

Article 6: Trafficking and exploitation of prostitution

20. Concern has been expressed about prostitution in Samoa³ but the lack of reliable data to expand on published observations⁴ make it difficult to give an accurate picture of the problem. Prostitution involving children came up in the Inquiry as recorded in its report. (See **Inquiry Finding 2 and corresponding Recommendations**).

Article 7: Participation in political and public life

21. The participation of women in political and public life is crucial in ensuring a balance of views on matters that affect society. The Inquiry report found that women (and other specific groups) continue to be systemically obstructed in their participation in Parliament, the Village Fono (and also the Church). This further entrenches the patriarchal system. It jeopardizes the success of attempts to address issues like family violence etc. through not taking due consideration of the voices of those most directly affected.

22. The absence of women (and other groups) reinforces public perceptions that decision making is a male prerogative, not only in Village Fonos, but in village committees, and by extension in the national parliament. Lack of effective participation in decision-making can apply also to persons with a disability, fa’afafine, fa’atama and SOGISC persons, or even children to an extent, where their absence in decision making processes reflect a lack of full enjoyment of human rights.

23. The Inquiry report comments and make recommendations on the participation of women in decision making (See **Recommendation 11**).

Article 10: Education

24. Corporal punishment is an issue discussed in the Inquiry. Currently, there is contradiction in the law in the sense that although corporal punishment is banned in schools under section 23 of the *Education Act 2009*, section 14 of the *Infants Ordinance 1961* allows ‘reasonable punishment’ by parents and teachers etc. of children under their control. Furthermore, despite the ban on corporal punishment in schools since 2013, little testify to any serious implementation. These issues are discussed with recommendations in the Inquiry report (See **Recommendations 5 and 13**).

³ See Joyetter Feagaimaali’i-Luamanu. “Economic reasons force 400 women to sex work.” *Samoa Observer*. (03 May 2017). Retrieved from http://www.samoobserver.ws/en/03_05_2017/local/19572/Economic-reasons-force-400-women-to-sex-work.htm. Accessed 9 July 2018; Mata’afa Keni Lesa. “Sex workers and frightening truth about Samoa today.” *Samoa Observer*. (4 May 2017). Retrieved from http://www.samoobserver.ws/en/04_05_2017/editorial/19613/Sex-workers-and-frightening-truth-about-Samoa-today.htm. Accessed 9 July 2018.

⁴ See “Multi-Country Mapping and Behavioural Study 2016: Samoa.” Retrieved from <http://www.pacific.undp.org/content/pacific/en/home/library/DG/pacific-multicountry-mapping-behavioural-study-key-findings.html>. Accessed 9 July 2018.

25. The Government recently proposed an amendment to the *Education Act 2009* to allow ‘reasonable force’ to be used by teachers in schools.⁵ NHRI Samoa, considers this amendment inexplicable. Approval would have a grave impact on children because reasonable force (physical or otherwise) and violence cannot easily be distinguished, one from the other. NHRI Samoa in a submission to the relevant Parliamentary committee has pleaded for consideration of the proposed amendment to be postponed until Parliament has considered the Inquiry report and its recommendations. (See **Recommendation 13**).
26. The Inquiry report also points to the lack of sexual education content in the current school curriculum. It also stresses the need for appropriate language to be developed to enable frank discussion of sexual issues with children and among people in general for purposes of greater enlightenment. (See **Recommendation 12**).

Article 11: Employment

27. The pay disparity between women and men village representatives is noted in the Inquiry report. This situation is not only discriminatory but it reinforces gender hierarchy and its impact on family violence (See **Recommendation 19**).
28. NHRI Samoa also notes that issues and recommendations regarding employment are discussed in the 2015 and 2016 SHRRs.⁶ Continuing examination of the situation of those in informal employment is needed.

Article 12: Health

29. There is a lack of focus on family violence as a matter of public health. Unsurprisingly therefore, health professionals are not trained to appropriately deal with patients who are victims of family violence. There is no screening process, insufficient allied services for referral and a need to properly document cases of family violence.
30. Another major concern is the lack of adequate and quality counselling services for victims of family violence.
31. The above issues are discussed in the Inquiry report with proposals as to ways to move forward (See **Recommendations 26 and 27**).

⁵ See *Member’s Pre-Sitting Briefing Summary June 2018*. Retrieved from <http://www.palemene.ws/new/members-pre-sitting-briefing-summary-june-2018/>. Accessed 9 July 2018. See also Mata’afa Keni Lesa. ““Reasonable force under reasonable circumstance” could kill a student.” *Samoa Observer*. (3 July 2018). Retrieved from http://www.samoobserver.ws/en/03_07_2018/editorial/34652/%E2%80%9CReasonable-force-under-reasonable-circumstance%E2%80%9D-could-kill-a-student.htm. Accessed 9 July 2018.

⁶ Full list of recommendations of the 2016 SHRR at **Appendix C** and Full list of recommendations of the 2015 SHRR at **Appendix B**.

Article 2: Disadvantaged groups of women

32. In its 2016 SHRR, NHRI Samoa highlighted several issues faced by persons with disability, with women with disabilities more likely to experience discrimination than men with disabilities. The 2016 SHRR made a number of recommendations which require consideration and implementation.⁷
33. The situation of some groups of disadvantaged women lack documentation and data. These groups include fa'atama and lesbians and other SOGISC persons. This is discussed in the Inquiry report and proposals made therein (See **Recommendation 3**).

Disaster risk reduction and climate change

34. NHRI Samoa's 3rd SHRR looked at human rights and climate change. It noted various concerns regarding the impact of climate change on the full enjoyment of human rights of the Samoan people. Of particular concern was the impact of climate change on marginalized communities including women, children, persons with disability, and future generations who stand to bear the worst impact.⁸ Some of the immediate concerns was in relation to issues of participation in State led adaptation and mitigation projects, as well as relocation and resettlement.⁹

Data collection & Monitoring and Evaluation

35. Data collection and management in Samoa is an ongoing challenge and there are a number of concerns regarding the reliability and accuracy of data collected by various agencies especially in relation to family violence. The Inquiry report finds that overall, there is a poor standard of record keeping and data collection across Ministries and NGOs, which severely undermines ability to implement effective programmes and responses to combat family violence. The Inquiry report makes recommendations on this issue (See **Recommendation 22**).

Optional Protocol and amendment to article 20 (1)

36. Lastly, to further promote and protect the rights of women in Samoa, it is important for Samoa to give continuous consideration to expanding the scope of its treaty obligations.

⁷ Office of the Ombudsman/ NHRI Samoa. *State of Human Rights Report 2016: Persons with Disability*. (2016). pp 28-30. Full list of recommendations of the 2016 SHRR at **Appendix B**.

⁸ It is important to also note the impacts of climate change on other vulnerable groups particularly those of diverse SOGISC and how measures to mitigate and reduce the effects of the climate change should take into account their needs and wants.

⁹ Full list of recommendations of the 2017 SHRR at **Appendix C**.

APPENDICES¹⁰

Appendix A: List of Findings and Recommendations – National Inquiry into Family Violence in Samoa Final Report | State of Human Rights Report 2018.

Appendix B: SHRR 2016: Persons with Disabilities – Full list of recommendations.

Appendix C: SHRR 2017: Human Rights and Climate Change – Full list of recommendations.

¹⁰ Appendices and copies of NHRI Samoa's Reports can be retrieved from [here](#).