



*Komesina o Sulufaiga*

29 Iulai 2018

Afioga Hon. Gatoloa'i Faana Amataga Alesana-Gidlow  
**TAITAIFONO**  
KOMITI TULAFONO TAUFU'AOFI

**FA'AMATALAGA A LE OFISA O AIA TATAU E FA'ATATAU I LE VAEGA 23 O LE  
TULAFONO TAU FA'AOFI O TEUTEUGA O LE TULAFONO AOGA 2018**

Tusa ai ma iloilogaga mo le Tulafono Tau Fa'aofi o Teuteuga o le Tulafono o Aoga 2018.

O lo'o fa'apipii atu i leni tusi le fa'amatalaga i leni mataupu taua mai leni Ofisa mo le silafia ma le iloiloina e le Komiti.

Ma le fa'aaloalo lava,

Maiava Iulai Toma  
**KOMESINA O SULUFAIGA**

**Pepa Fa'apipi'i:** (1) Pepa Fa'amatalataga  
(2) Fa'amatalaga a le Ofisa o Aia Tatau e Fa'atatau I le F.K (16) Fa'apitoa 3

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**OFFICE OF THE OMBUDSMAN/ NHRI SUBMISSION TO PARLIAMENT SUB-COMMITTEE IN RELATION TO THE AMENDMENT EDUCATION BILL 2018**

**1. BACKGROUND**

The Office of the Ombudsman as the National Human Rights Institution of Samoa (NHRI) makes this submission on the proposed amendment of the *Education Act 2009*. The proposed section 23 to allow the use of “reasonable force” by a secondary school on a child attending such school<sup>1</sup> is of particular interest.

NHRI Samoa notes the Government’s explanation that the purpose of this particular amendment provision is not to punish but to prevent a child from causing harm to other children. Furthermore, it is to protect teachers from potential charges of ‘assault’ when they intervene on occasions of interschool violence. NHRI Samoa also acknowledges Government’s intention to have workshops for teachers to clarify the application of ‘reasonable force’.

The attention of the honourable committee is respectfully drawn to a submission prepared by NHRI Samoa for Cabinet on 6 May 2016 in response to Cabinet Directive F.K (16) Faapitoa 3. Cabinet issued that directive following very serious violent confrontations between school students. The Cabinet directive called for action in the following terms:

*Direct the Office of the Attorney General to prepare a law to reinforce the deterrence and prevention of these violent acts and violence between school students in the future. Such a law should incorporate or reflect the methods currently used to prevent and stop such violent acts of school students, using methods and principles from the Bible, Samoan culture and other methods used by other democratic countries of the Commonwealth to eliminate these violent acts of the youths.*

The Cabinet directive did not specify corporal punishment, but as the issue was in essence mooted, NHRI Samoa formulated a submission to Cabinet on corporal punishment and the problem of school violence. That document is **attached** for the information of the honourable Committee as **NHRI commentary on technical and general aspects relating to the subject matter of the Amendment Bill**.

**2. STANCE of NHRI SAMOA on the AMENDMENT BILL**

NHRI Samoa respectfully points out that it is not aware of any official effort to examine the problem of violence in schools in the comprehensive context requested by Cabinet in May 2016, nor is NHRI Samoa aware of any data showing that the problem in this country has gotten worse. Indeed it could be claimed that things are much better today than they were in 2016. NHRI

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<sup>1</sup> See clause 5 of the *Education Amendment Bill 2018*.

Samoa is therefore surprised that, out of the blue, there is now intention via the *Education Amendment Bill 2018* to drastically reverse the direction this country has been taking to advance the wellbeing and protection of the child in general and in the school environment.

In the circumstances it would appear that faced with the problem of inter-school violence, Samoan wisdom has determined the solution simply to be:

***“Beat the child”.***

Beating the child, is the shortcut discipline mode to which we in Samoa have become so accustomed, that it is almost an imperative for many of us to employ it when the need to discipline arises. Given the truism that ‘violence begets violence’ we seem to be making totally predictable our future in the area of human relationships.

In that Cabinet had asked in 2016 for remedial legislative measures to **“reflect or incorporate methods currently used ... by other democratic countries of the Commonwealth”** it is useful to show current practice in neighbouring Commonwealth countries.

Following Samoan prohibition of the practice in 2013, Tonga banned corporal punishment in schools in 2014. Tonga is continuing its efforts to enforce compliance to this ban in its schools. The Australian Government in 2012 stated that it does not endorse corporal punishment. Australian laws in these matters however, are determined at individual state level. Most Australian states and territories have totally outlawed corporal punishment in schools labeling it archaic and excessive but it is still lawful in very rare cases for private schools in some states to use corporal punishment as a form of discipline. There is usually a requirement for such schools to notify parents of the practice before students are enrolled in them. The policy of one such school required a parent to actually administer the punishment when it is required in the presence of a staff member.<sup>2</sup> Both New Zealand and Fiji have “no tolerance” policies against corporal punishment in schools.

Corporal punishment in schools may once have been common place all over the world, but it is becoming clear that it does not achieve its aims; it has significant negative societal outcomes; and it does not serve the best interests of the child. The laws of neighbouring Commonwealth countries as shown above reflect this realization.

The Report of the recently completed Samoa National Inquiry into Family Violence (SNIFV) to be released on 3 September 2018 points to emerging realities that are turning the world away from reliance on old disciplining practices. The Report points to the United States of America as an interesting case study of the impact of corporal punishment in schools. A number of States in America have banned corporal punishment in schools and a number have not, making for a large controlled comparison. The impact of corporal punishment appears undeniably negative:<sup>3</sup>

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<sup>2</sup> Rebecca Vukovic. “Corporal punishment: the issue that sent shock waves through schools.” September 5, 2014. Accessed at <https://au.educationhq.com/news/11202/corporal-punishment-the-issue-that-sent-shock-waves-through-schools/>.

<sup>3</sup> Annie Reneau. “Has a decrease in spanking led to higher crime rates? Nope.” Accessed at <http://www.scarymommy.com/decrease-spanking-higher-crime-rates/>.

- Of the states with the 10 highest murder rates, 8 allow corporal punishment;
- Of the 10 states with the highest prison population, 9 allow corporal punishment;
- Of the 10 states with the lowest prison population, 0 allow corporal punishment;
- Of the 10 worst states in which to raise children (as measured by the condition of children index), all 10 allow corporate punishment;
- Of the 10 best states in which to raise children, 0 allow corporal punishment;
- Of the states with the ten worst high school completion rates, 7 allow corporal punishment;
- Of the 10 states with the best high school completion rates, 1 allows corporal punishment;
- Of the 10 most impoverished states, 7 allow corporal punishment;
- Of the 10 least impoverished states, 2 allow corporal punishment;
- Of the 10 states with the worst health rankings, 8 allow corporal punishment;
- Of the 10 states with the best health rankings, 1 allows corporal punishment.

The SNIFV report points out that crime is a complex matter and the causes of these correlations cannot be attributed solely to the presence or prohibition of corporal punishment but that it significantly increases the risks of undesirable societal outcomes. Allowing corporal punishment in schools creates the same negative impact on society as family violence and permits increased violence to creep into homes. The two issues cannot be dealt with in isolation due to inherent linkages.

### **‘Reasonable force’**

NHRI does not understand what constitutes ‘reasonable force’, how it is to be determined and when it is applicable in the classroom or in the “intervention” situation with regard to inter-school violence. Will a teacher be free to lash out at students with “reasonable force” whenever he considers it appropriate? How will this legislated “reasonable force” measure relate to the activities of former students who are said to feature in the inter-school violence equation as instigators or stirrers behind the scene?

Reasonable force to prevent harm to oneself or defenseless others is the legitimate prerogative of any individual in the face of aggressive violent conduct. The protection of justification is available to teachers and anyone else in violent situations without the need for any special legislative provision.

### **Negative impact on the life and development of the child**

NHRI Samoa notes views expressed by some members of the community that “*they were physically disciplined by their teachers (and parents) when they were young and that they have turned out ok as a result*” or “*getting hit as a child made me a better person*” or “*children are out of control now days because they are no longer disciplined*”. These anecdotal statements cannot be taken seriously as basis for national policy.

An individual can grow up to be good despite having been harshly disciplined physically and verbally, but not necessarily because of it. Similarly, a person who is brought up in a non-violent way can become a victim or perpetrator of violence despite his or her upbringing rather than because of it. The statistics however show increased risk of further violence down the line in the life of a child who is raised in a violent household compared to one who is not.

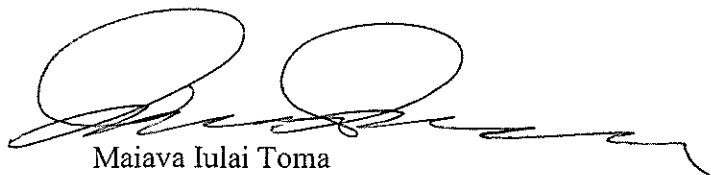
We should be asking ourselves why it is that our children are going to school and conducting themselves in undesired violent manner. Our children are the product of our homes. The teacher's primary job is to educate them in accordance with prescribed syllabi not to shape them as decent civil human beings. The latter is the sacred responsibility of the parents. Dependence on teachers to discipline and to correct a child in his ways is a grave derogation of duty on the part of any parent. The behavior children bring to school is behavior they learn one way or another at home. The unpleasant truth is that we are raising violent children for a modern society which supposedly wants to be peaceful.

Rather than empowering teachers to reinforce violence by injecting more violence into the lives of children, we should be making a concerted effort to reverse the reality of violence we are breeding into the future generations of Samoa. The recently completed SNIFV has looked at the problem from this perspective and makes recommendations for a coordinated national effort in this regard. The SNIFV is intended to be launched on 3 September 2018.

Samoa is a signatory State of the Convention on the Rights of the Child and all its protocols. It is the view of the NHRI that if the State is serious about ensuring children and students in Samoa are free from violence and abuse consistent with Article 19 of the CRC, it must progressively make it clear in its laws that the use of physical force on a child whether it is termed 'discipline' or 'reasonable correction' is a thing of the past. Passage of this Bill by Parliament will cast Samoa as a country that is moving backwards from the wonderful progress it has achieved so far and contrary to all the declarations it has been making on the international stage in these matters.

**The NHRI of Samoa pleads with great respect for section 23 of the Amendment Bill to be deferred until such time Parliament and Government have had full opportunity to consider the NIFVS report and its recommendations.**

Respectfully submitted,



Maiava Iulai Toma  
**OMBUDSMAN**