



**United Nations Human Rights Council
Universal Periodic Review: Samoa**

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Submission of the International Center for Advocates Against Discrimination (ICAAD)

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About ICAAD

The International Center for Advocates Against Discrimination (ICAAD) is a tax-exempt 501(c)(3) non-profit organization that combats structural discrimination and promotes human rights norms consistent with public international law. Structural discrimination refers to systems of inequality that provide a social, political, cultural, or economic advantage to a dominant group while furthering barriers of exclusion that make marginalized communities more susceptible to violence and indignity. By leveraging partnerships, ICAAD brings together passionate multidisciplinary teams of lawyers, data scientists, universities, and design strategists to improve access to justice for women, girls, and vulnerable communities, while strengthening the capacity of civil society and government.

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Executive Summary

Drawing on ICAAD's research, this submission highlights issues of structural discrimination that impact women and girls in Samoa. The research examines Samoa's compliance with its international human rights obligations on the issue of violence against women and girls.

Structural Discrimination

Structural discrimination occurs when laws, policies, and societal/cultural norms generate outcomes for certain groups because of their race, religion, ethnicity, gender, and sexual orientation. Certain practices in a region or nation may appear to be facially neutral, but in practice, impose significant barriers that disadvantage certain groups in achieving substantial equality. This perpetuates barriers of social exclusion and prevents marginalized groups from fully integrating into the social, economic, and cultural fabric of society.

Violence Against Women and Girls

a) Systematic Discrimination:

- a. Violence against women is "endemic and pervasive" in Samoa.¹ 46.4% of women and girls between the ages of 15 and 49 years who have entered into a relationship experienced physical and/or emotional and/or sexual violence by an intimate partner.² Attitudes in Samoan society reflect the depth of the problem: about half of men believe that beating a woman is sometimes justified and 70% of women believe that husbands sometimes have good reason to beat their wives.³ According to a 2006 "Samoa Family Health and Safety Study" by the Secretariat of the Pacific Community and the UNFPA found that 87.7% of women did not seek help for physical abuse, and 72.5% of those did not seek help because they believed physical abuse was normal or not serious.⁴
- b. Violence against women and girls is also prevalent outside the context of intimate partner violence: one survey reported that 64 percent of female respondents experienced some form of abuse by someone other than their partner.⁵
- c. Rape is underreported because of social attitudes that discourage such reporting.⁶ Spousal rape is not criminalized.⁷
- d. While the government passed the *Family Safety Act*, focused on protection orders, the government has yet to enact specific "laws to enforce protection of women from all forms of violence and abuse."⁸ Cases of domestic violence are covered under the law against common assault.⁹ Law enforcement agencies are reluctant to arrest perpetrators of domestic violence in close-knit communities.¹⁰

- e. Women and girl's access to the judicial system is limited by the use of traditional village counsels (*fono*) and reconciliation (*ifoga*) to address cases of sexual assault and domestic violence.¹¹ The Constitution of Samoa holds that laws include customary laws. The *fono* has the power to impose punishments in accordance with custom. Any punishments imposed shall be taken into account in mitigation of a sentence, per the *Village Fono Act 1990*. The *fono* is institutionalized by national legislation as a local legislative, executive and judicial organ.¹² "For many Samoans, traditional justice practices through, for example, the *fono*, remain much more real and legitimate than do those of state justice."¹³ In cases of sexual assault and domestic violence, *fonos* fail to prevent continuing abuse or may counsel the victim instead of the perpetrator.¹⁴ *Fonos* thus discourage women from reporting cases to the police and further undermine the evidentiary process by not keeping written records of proceedings.¹⁵
- f. *Ifoga* is a traditional form of reconciliation that historically was used to settle crimes between families or villages.¹⁶ The use of *ifoga* in domestic violence cases reinforces the attitude that domestic violence and sexual assaults are private matters.¹⁷ Compensation is often paid to the victim's family or community of the survivor but not to the victim herself.¹⁸ Victims are not involved in the reconciliatory process and their wishes remain secondary.¹⁹ Judges consistently take into account settlements under *ifoga* as a mitigating factor in the sentencing process.
- g. ICAAD and law firm DLA Piper LLP conducted case-law analysis of 931 randomly selected sexual and gender based violence (SGBV) cases from 12 countries in the Pacific Island region to capture the impact of cultural norms and gender stereotypes on sentencing practices in domestic violence and sexual assault cases.ⁱ Our analysis of Samoa consisted of 216 sexual assault and 9 domestic violence cases. In those cases, 76% of victims/ survivors of domestic violence and sexual assault cases were girls (under 18) with 40% of all victims/ survivors between the age of 12-15 years old (representing the largest demographic of girls being impacted). It is important to note that prevalence studies conducted in the Pacific using the World Health Organization methodology surveyed women and girls between the ages of 15-49. Therefore, it is likely that the 46.4% of women and girls found to have faced SGBV in the prevalence studies is not reflective of the full scope of violence directed at girls.ⁱⁱ
- h. *Ifoga* (cultural norm) played a role in each domestic violence case analyzed, but since the number of available domestic violence cases on PacLII (legal database for cases in the Pacific) is limited, we focus our analysis here only on the sexual assault cases analyzed

ⁱ Data presented at the South Pacific Lawyers Conference in Brisbane, Australia on September 17, 2015. Upcoming Report will be published before the end of the year. Please see conference program that lists Hansdeep Singh, Co-Founder of ICAAD as a speaker for the event:
http://www.lawcouncil.asn.au/lawcouncil/images/SPLC_Program.pdf

ⁱⁱ The data may also suggest that prosecuted violence against girls is prioritized over violence against women.

(216 cases). In 70% of the 216 sexual assault cases analyzed, impermissible mitigating factors (gender stereotypes, cultural norms,ⁱⁱⁱ and other factors) were mentioned by the defence or judge in the case, leading to a sentence reduction in 53% of sexual assault cases. Finally, the average starting sentence^{iv} in sexual assault cases is 8 years and the final sentence is 5.1 years. Mitigating factors (both permissible and impermissible) led to a sentence reduction in 36.3% of sexual assault cases.

- i. One example of a case where a sentence was reduced due to *ifoga* in Samoa is the case of *Police v Metu*, where the perpetrator indecently assaulted a 7-year-old girl. The family of the perpetrator had performed *ifoga* to the family of the victim, and neither the perpetrator or victim were involved. The judicial officer deducted 6 months from a three-year sentence for the ceremony.²⁰ This case is an example of why the use of cultural norms, in this case *ifoga*, should be considered an impermissible mitigating factor.

b) State Response

- a. Samoa ratified CEDAW in 1992.²¹ Recently, the government of Samoa has taken some significant steps to address the issue of violence against women. Parliament passed the Family Safety Act in 2013.²² The Act focuses on protective orders for victims of domestic violence.²³ The Minister for Women, Community and Social Development launched the National Policy for Women of Samoa 2010-2015.²⁴
- b. The number of reported cases of rape has increased, partly as a result of government efforts to raise awareness of the issue.²⁵ Courts take the issue of rape seriously and the conviction rate is high.²⁶
- c. The Ministry of Police and Prisons created a nine-person Domestic Violence Unit.²⁷ The Unit works in collaboration with NGOs to combat domestic violence.²⁸

c) Remaining Challenges

ⁱⁱⁱ As noted above, cultural practices like (*ifoga*, *bulubulu*, reconciliation, forgiveness, apology etc.) may be currently accepted forms of mitigation based on domestic legislation. However, we surmise, echoing the CEDAW Committee's Concluding Observations on Samoa, that reconciliation type cultural norms and practices in sexual assault and domestic violence cases should be considered impermissible mitigating factors for the following reasons: 1) power imbalance between victims/ survivors and perpetrators; 2) a lack of agency or voice for women in the reconciliation process; 3) societal/ familial/ tribal pressures that prioritize communal harmony over the well being of the woman or girl; 4) girls do not understand the process or can not consent.

^{iv} "Starting sentence," as defined in our analysis, is the sentence the judge initially states should be given plus all the aggravating factors considered in the case.

- a. Societal attitudes generally condone domestic violence and discourage women from reporting cases of domestic violence and sexual assault. Reliance on traditional forms of dispute resolution limits victims/survivors voices and their access to the judicial process, as well as leads to the continuation of violence. Understanding that the *fono* and *ifoga* are important facets of Somoan culture and that “Samoan culture also holds that women are often the decision makers and controllers of household resources and deserve respect as individual members of the community,”²⁹ it is important for the government and *fono* to raise awareness that domestic violence and sexual assault are intolerable behaviors in any circumstance, and limit the use of *ifoga* as a mitigating factor in Court.
- b. Samoa also launched a Family Court and a Family Violence Court in 2014.³⁰ Because of the emphasis of Samoan tradition and culture on family unity, these Courts are “therapeutic” in nature.^v

d) Recommendations

- a. Samoa must enact legislation to specifically criminalize violence against women, and make spousal rape illegal.³¹ Legislation must ensure that if there are conflicts between the traditional and the formal justice system, such conflicts must be resolved in accordance with gender equality standards and the human rights of the victim. Reconciliation and compensation paid under customary law should not be considered as a mitigating factor in the sentencing phase of cases of sexual assault or domestic violence.
- b. Legislation should also allow the victim/ survivor to be entitled to restitution in both civil and criminal proceedings.³²
- c. To ensure judicial accountability and consistency in sentencing, we recommend the creation of a Sentence Monitoring System, similar to a structure in the United Kingdom where anybody can file a complaint regarding a sentence with 28 days to a judicial officer who can refer the sentence to a Court of Appeal if deemed appropriate.³³

^v The U.S. Department of Justice found that intrusive sentences, such as jail, work release, and electronic monitoring/ probation, result in a significant decrease in rearrest for domestic violence, in comparison to penalisation deemed less intrusive, such as fines or suspended sentences without probation. Rearrests for intrusive sentences in domestic violence cases were 23.3% versus rearrests of 66% for non-intrusive sentencing. *See* Klein, A., “Practical Implications of Current Domestic Violence Research: For Law Enforcement, Prosecutors and Judges,” U.S. Dept. of Justice Office of Justice Programs (2009), *available at*: <https://www.ncjrs.gov/pdffiles1/nij/225722.pdf>.

¹ Secretariat of the Pacific Community - Pacific Regional Rights Resource Team, *Legal Analysis on Violence Against Women, Drafting Options for Legislative Reform* (July 2013) at 4.

² *Id.*

³ UN Women, 'Ending Violence Against Women and Girls: Evidence, Data and Knowledge in the Pacific Islands Countries', (July 2011), 2nd Edition.

⁴ Roguski, M & Kingi, V, "Update of Baseline In-Country Review, Samoa Report," Crime and Justice Research Centre, Victoria University Wellington (2011).

⁵ *Supra* note 1, at 10.

⁶ U.S. DEPARTMENT OF STATE, COUNTRY REPORT ON HUMAN RIGHTS PRACTICES 2013: Samoa, at 10, <http://www.state.gov/j/drl/rls/hrrpt/humanrightsreport/index.htm?year=2013&dliid=220230>.

⁷ *Id.*

⁸ *Supra* note 1, at 12.

⁹ *Supra* note 6, at 11.

¹⁰ *Supra* note 1, at 22, 29.

¹¹ *Supra* note 1, at 22.

^{12c} "Traditional Justice Systems in the Pacific, Indonesia and Timor-Leste," UNICEF Papua New Guinea (2009), <http://www.unicef.org/tdad/unicefradpacificindonesiatimor09.doc>.

¹³ *Id.* at 17.

¹⁴ Martin, P, "Implementing women's and children's rights: The case of domestic violence in Samoa," *Alternative Law Journal* (2002), <http://www.austlii.edu.au/au/journals/AltLawJl/2002/82.pdf>.

¹⁵ *Id.*

¹⁶ Tuala-Warren, Leilani, "A Study in Ifoga: Samoa's Answer to Dispute Healing," Te Matahauriki Institute Occasional Paper Series, Number 4, University of Waikato (2002), <http://lianz.waikato.ac.nz/PAPERS/Occasional%20Papers/TMOP-4.pdf>.

¹⁷ *Id.* at 6.

¹⁸ *Supra* note 1, at 61.

¹⁹ *Id.*

²⁰ *Police v Metu* [2013] WSSC 103

²¹ United Nations Treaty Collection, CEDAW fact sheet (Nov. 18, 2014, 2:52 PM), section *Declarations and Reservations* https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-8&chapter=4&lang=en#EndDec.

²² *Supra* note 1, at 6.

²³ *Id.*

²⁴ *Id.*

²⁵ *Supra* note 6, at 10.

²⁶ *Id.*

²⁷ *Id.* at 11.

²⁸ *Id.*

²⁹ *Supra* note 14.

³⁰ “Family Law Forum openly discuss issues normally swept under the mat,”
<http://www.pina.com.fj/index.php?p=pacnews&m=read&o=55644215453bb3c545e3bd03ea4be7>.

³¹ *Supra* note 1, at 5-6.

³² *See* Economic Security for Survivors Project, *Wider Opportunities for Women* (2012),
<http://www.wowonline.org/documents/RestitutionPolicyBrief2012.pdf>, *see also* Factsheets: Restitution Legislation, New York City Alliance Against Sexual Assault, http://www.svfreenyc.org/survivors_factsheet_77.html.

³³ “Complain about a low Crown Court sentence,” <https://www.gov.uk/complain-about-low-crown-court-sentence>.