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Community Law-Making and the Codification of Customary Laws — Social and Gender Issues in Samoa

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Samoa¹ possesses two parallel systems through which social order and justice are maintained: the formal constitution-based judicial and legal system and the traditional justice mechanism provided by the village *fono* (councils) and *matai* (chiefs and orators). Local government in Samoa is administered by the Ministry of Women, Community and Social Development (MWCSO) through traditional village councils, and similar local government structures have been established in new settlements and suburban areas, albeit without historical traditional authority. This In Brief presents several social and gender issues which may emerge from the codification of customary laws as a result of the 2016 amendments to the Village Fono Act.

In Samoan traditional villages, village councils play an integral role in maintaining social order and passing judgement on offences, supplementing the work of the police. Traditional villages comprise a territory, have a historically grounded *fa'alupega* (statement of chiefly precedence) and serve as a seat of extended families and their *matai* titles. Villages have a *fono* comprised of the village *matai*. Since Samoa became an independent state in 1962, there have been many instances of village councils exceeding the limitations of their authority imposed by the state legal system, including infringing on the rights to freedom of religion and, as a penalty for offences, the destruction of property or banishment. Banishment, if imposed by the village *fono*, only becomes illegal if a complaint is laid and upheld by the high court.

The Village Fono Act was passed in 1990 in order to clarify the extent of village councils' authority and compensate village *matai* for the loss of their previously exclusive voting rights. This limited the authority of the council to matters relating to the social and economic development of the village and encompassed the use of customary land for agricultural purposes and maintaining peace and order in the community. However, conflict between customary authority and the law persisted in relation to issues such as banishing wrongdoers and their families from villages and preventing the establishment of new

churches in villages (several cases have been brought to the courts to appeal these *fono* decisions). After national consultations by the Samoa Law Reform Commission, amendments to the Village Fono Act were passed by parliament in 2016, which, while increasing the authority of village councils, encourage them to codify customary laws and other forms of regulation to which villages are subject (including marine conservation zones, resource management and state-initiated development activities).

Currently, 49 district development committees representing villages in each electoral district are being formed by the MWCSO to implement Community Integrated Management (CIM) plans. These committees comprise the village representatives, village women's committee representatives and other persons chosen by the village leaders within the district. CIM plans are implemented as a partnership between the government (through implementing ministries) and the villages within the district. They address four key areas; infrastructure; environment and biological resources; livelihood and food security; and governance (Ministry of Natural Resources and Environment 2018).

Efforts to assist villages with putting their by-laws in writing commenced before the amendment of the Act under the Good Governance Project of 2014–15, which was funded by the Pacific Commonwealth Local Government Forum. This project was managed by the Division of Internal Affairs at the MWCSO and aimed to raise awareness in village councils of by-laws non-compliant with state law. Currently, under the Act, the ministry requires all traditional villages submit their by-laws for documentation. This process is voluntary and not aimed at altering by-laws non-compliant with state law.

As noted in the 2015 research report *Political Representation and Women's Empowerment in Samoa* (Meleisea et al. 2015), many villages have unwritten laws that deny recognition of *matai* titles held by women and conventions that exclude female *matai* from participating in village councils. This report made three recommendations to parliament concerning the forthcoming amendment to the Village Fono Act for the recognition and inclusion of female *matai* in village councils and consultations

with village women's committees,² in keeping with Article 15 of the constitution of Samoa. These recommendations were presented to the Parliamentary Select Committee that was scrutinising the bill, but were ultimately ignored.

Although women have made many strides towards equality in the modern aspects of government and business, women are largely invisible in local government, and hold few seats in parliament. Recent legislation provides that a minimum of 10 per cent of seats 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 shows that female partner and child beating are common in Samoa; both are widely condoned by custom and Samoan understandings of Christian teaching (SPC 2006; MWCSO 2017). The 2017 Samoa Family Safety Study (MWCSO 2017) found that an estimated 60 per cent of women aged 20–49 who had ever been in a relationship (married, de facto, separated, divorced or widowed) experienced domestic abuse, with 46 per cent having been abused in the last 12 months. As Samoa's Ombudsman and Commissioner for Human Rights [Maiava Iulai Toma](#) has pointed out, the key institutions in addressing this problem are village councils and village churches (2015). Given prevailing attitudes in villages, however, it may be difficult to persuade village councils to tackle family violence and the exclusion of women in local government (Schoeffel et al. 2018).

The new requirements of the amendments to the Village Fono Act, which call for the MWCSO to support villages in documenting their by-laws, have accompanied a significant change in the ministry's community-driven programming approach. Each village has two representatives to liaise with the national government: the village council representative (*su'i o le nu'u* — a matai elected by the village council) and a women's committee representative (*su'i tamaitai* — elected by the women's committee). In non-traditional villages without a *fono*, the village representative is chosen by the church congregation. These representatives were initially managed by different divisions: the Division of Internal Affairs and the Division of Women. Under a restructure, these functions have been merged into a new Division of Governance and Leadership. Issues related to salaries for representatives and the lack of systematic work processes and policies must now be tackled by the newly merged unit. Community-directed project processes are documented in the MWCSO's Community Development Sector Plan 2016–2021. Under this shift in approach, communities are empowered as initiators. It remains unclear how the gender issues of violence and political exclusion will be addressed in the new system. Without dealing with

already-documented systemic issues, the recent measures may not stimulate the change of practices that reinforce gender inequality at the village level.

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Endnotes

1. This article refers to Samoa, also known as the Independent State of Samoa, as distinct from American Samoa.
2. Women's committees were introduced during the New Zealand colonial period 1921–62 to improve hygiene and sanitation in villages (Schoeffel 2016).

References

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