



UPR OF SAMOA
Summary Statement of Important Issues
prepared by the
SAMOA FA'AFAFINE ASSOCIATION



Faafafine and Faafatama

Samoa has 4 cultural genders – female, male, fa'afafine, fa'afatama, however only two, female and male are promoted and included in all legislation. **Fa'afafine** and **Fa'afatama** are indigenous LGBTI citizens of Samoa. Fa'afafine are male at birth and explicitly embody feminine gender traits. Some identify as gay males, and some identify as transgender. Fa'afatama are female at birth and explicitly embody masculine gender traits. Most identify as lesbian, and very few as transgender.

1. Criminalization of Same-sex Relations

The *Crimes Act 2013* purportedly repealed the crimes of consensual same sex relations in the criminal code. However the new bill added in two new sections that contain provisions that continue to single-out and criminalize consensual same-sex relations between adults: Section 67 (Sodomy), Section 68 (attempts to commit sodomy). In addition a third provision treats homosexuality differently, Section 71 (Keeping a place of resort for homosexual acts).

We recommend that the Samoan government amend or repeal sections 67 and 68 of the *Crimes Act 2013* so as to allow consensual same-sex relations between consenting adults, and to repeal or amend section 71 to not single-out homosexual acts.

2. Non-discrimination

Section 20 (2) of the *Labour and Employment Relations Act 2013* now includes sexual orientation as one of the grounds for anti-discrimination in employment, however gender identity is not-included.

We recommend

- (1) discrimination on the ground of gender identity be prohibited in employment legislation, *Labour and Employment Relations Act 2013*;
- (2) prohibition of discrimination on the ground of sexual orientation and gender identity be included in all other relevant Samoan legislation.

3. Gender Recognition

Fa'afafine and Fa'afatama who identify as transgender who have undergone gender confirmation surgery need recognition through their identity documents.

We recommend those Fa'afafine / Fa'afatama who identify as transgender be allowed to change the gender marker on all identity documents including birth certificates.

We recommend amending the binary model of gender identification so as to be more inclusive for its indigenous LGBTI citizens.

4. Inclusion of Faafafine in national human rights strategies

We commend the work Samoa has done in the Human Rights national education and the formation of the Samoan National Human Rights Council and the Samoa Faafafine Association's membership of the National Human Rights Council to be confirmed. However some sectors of the community continue to be neglected. In its 'State of Human Rights in Samoa' report in August of 2015, the human rights of Faafafine and Faafatama were not included.

We recommend the inclusion of Samoa's Faafafine and Faafatama in future 'State of Human Rights in Samoa' Reports.

5. Intersex

There is no statement, policy or promotion of Intersex recognition for full equality for human rights in Samoa. Samoa does not have any data on Intersex births in Samoa, nor does it have any policy statements or priority pathway to recognition of Intersex citizens in Samoa.

We recommend that the Samoan government identify and consult with Intersex persons in Samoa with a view to understanding and addressing their human rights concerns.

6. Faafafine and Faafatama representation in parliament

Amendments to Part V, Section 44 of the *Constitution of the Independent State of Samoa* to guarantee 10% of the seats in Parliament to women have been enacted, but as Samoa has four gendres, we also need coverage for Faafafine and Faafatama.

We recommend that Samoa give due consideration to allowing constitutionally guaranteed percentage of the seats in Parliament to Faafafine and Faafatama of Samoa.

7. Other Recommendations

We commend Samoa's process engagement during the current CEDAW legislative compliance Review and therefore encourage Samoa to engage more-widely in the UN human rights system.

Recommendations

We recommend Samoa ratify the following international instruments:

- International Convention on the Elimination of All Forms of Racial Discrimination
- International Covenant on Economic, Social and Cultural Rights

We recommend that an invitation to be issued to United Nations special procedures of the Human Rights Council.

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