


Criminalisation of Homosexuality

Updated 25 October 2015

	Samoa	
<p>National Law: <i>Crimes Act 2013</i>¹</p> <ul style="list-style-type: none"> - S67: Sodomy² - S68: Attempt to Commit Sodomy³ - S71: Keeping place of resort for homosexual acts⁴ 	<p>Maximum Penalties:</p> <ul style="list-style-type: none"> - 5 years' imprisonment - 5 years' imprisonment - 7 years' imprisonment 	<p><u>Treaty Ratification</u></p> <p>CEDAW</p> <p>CRC</p> <p>ICCPR</p>
<p>The law is only applicable to men.</p>		
<p>Enforcement</p>	<ul style="list-style-type: none"> - 2014: The United States report suggests that the laws are not actively enforced with regard to consensual same-sex sexual conduct between adults.⁵ 	
<p>Statements by Public Figures</p>	<ul style="list-style-type: none"> - 21 October 2013: Samoan Prime Minister, Tuilaepa Sa'ilele Malielegaoi, reportedly criticised the marriage of a gay Samoan man in New Zealand as inappropriate: <i>'I now declare you man and husband and that is very inappropriate...everything is upside down.'</i>⁶ - May 2013: In connection with the newly enacted Crimes Act 2013, the Attorney General, Aumua Ming Leung Wai, said that: <ul style="list-style-type: none"> <i>with Samoan society where we accept fa'afines [sic], males who are more feminine, I don't think it's appropriate for us to make it illegal for them to wear women's clothes. And we have several fa'afines [sic] who come to work and they wear women's clothes and under the crimes ordinance that is an offence. And I think that's certainly something that we had to remove from our law books.</i>⁷ - 25 April 2013: So'oalo Roger Stanley, Fa'afafine Association President, spoke against "stirring" things up with the question of gay marriage: <ul style="list-style-type: none"> <i>There are so many reasons out there, not only that our Prime Minister is now our patron and he is strongly opposing the gay marriage bill of New Zealand. Basically what it comes down to is our Christian values and principles, and as far as the culture and religion. Because of the fa'afafine that we identify ourselves closely with, simply because it's very cultural oriented and so the cultural norms is [sic] that suited us well in our society. So you see in that same concept that we are also taken as another strong sector where we opposed gay marriage.</i>⁸ - June 2010: The Samoa Law Reform Commission recommended the abolition of the 	

	<p>sodomy laws to widespread criticism from Church leaders. The Samoan government subsequently rejected the recommendation as unacceptable in a Christian country.⁹</p>
<p>Persecution and Discrimination</p>	<ul style="list-style-type: none"> - 2014: The United States country report noted that there were no reports of societal violence based on sexual orientation or gender identity, but there was evidence of isolated cases of discrimination.¹⁰ - 2013: The United States country report found no reports of violence on the basis of sexual orientation. Historically, the acceptance of the Fa'afafine culture has led to greater levels of cultural acceptance, at least in relation to trans-people.¹¹
<p>Legislative News</p>	<ul style="list-style-type: none"> - 1 May 2013: The Samoan Government updated its criminal law in the <i>Crimes Act 2013</i>, including sexual offences, making some positive steps with respect to LGBT. In particular, under section 50 'sexual connections' was defined to include oral and anal sex, and by inference allowing sexual contact between males if it is consented to.¹² However, section 67 of the Crimes Act continues to criminalise sodomy. <p>Importantly as well, the 2013 changes included the decriminalisation of female impersonation, affirming the Samoan fa'afafine community.</p> <p>In a further sign of the government's engagement on LGBTI issues, the leading LGBTI organisation in Samoa has been appointed a member of the country's newly formed advisory board to the National Human Rights Institute (NHRI).¹³ The NHRI was established in 2013 within the Office of the Ombudsman, but no work has yet been commenced on LGBTI rights issues. Lesbians and gay men are not as visible but the transgender community is active and organized through the association representing transgender people, the Fa'afafine Association. The Prime Minister is Chair of the Fa'afafine Association.¹⁴</p> <ul style="list-style-type: none"> - 2013: Both sexual orientation and perceived or actual HIV status were added as protected grounds to employment laws in Samoa in 2013 through enactment of the Labour & Employment Relations Act 2013.¹⁵ - 2011: (UPR) Samoa rejected the recommendations to repeal laws criminalising relations between consenting adults of the same sex. The delegation stated, however, that: <p><i>[t]here have not been formal charges before the Courts based on sexual orientation and gender identity and if so, the courts would rule them out as discriminatory. The Constitution of Samoa protects right of every person regardless of gender. Decriminalizing sexual activity of sodomy is not possible at this time because of cultural sensitivities and Christian beliefs of the Samoan society. The Samoa Law Reform Commission's work on considering domestic legislation is a work in progress/ongoing.</i>¹⁶</p>

Further, in the UN Working Group report it is explained that:

Samoa noted the gaps and weaknesses in its legislative framework on upholding equality and non-discrimination based on sexual orientation, and that relevant legislation was being reviewed by the Samoa Law Reform Commission. Samoa indicated that Fa'afafine, gays and lesbians were integral members of Samoan society and were heirs to family chiefly titles and lands through extended family consensus, as all men and women of its society were. However, sexual orientation was a sensitive issue in Samoa given the religious and cultural beliefs of mainstream society. Nonetheless, Samoa was confident that education, awareness and sensitization would pave the way for societal acceptance and prevention of discrimination that might arise out of sexual orientation.¹⁷

- **2011:** Samoa sponsored the 2011 Human Rights Council Joint Statement (to end acts of violence based on Sexual Orientation and Gender Identity).

¹ The law is : www.paclii.org/ws/legis/consol_act/ca201382/

² *Crimes Act 2013, s.67: '(1) A person who commits sodomy is liable... (c) in any other case, to imprisonment for a term not exceeding 5 years. (2) Sodomy is complete upon penetration. (3) It is no defence to a charge under this section that the other party consented.'*

³ *Crimes Act 2013, s.68: 'A person is liable to imprisonment for a term not exceeding 5 years who: (a) attempts to commit sodomy; or (b) assaults any person with intent to commit sodomy.'*

⁴ *Crimes Act 2013, s.71: "A person is liable to imprisonment for a term not exceeding 7 years who: (a) keeps or manages, or knowingly acts or assists in the management of, any premises used as a place of resort for the commission of indecent acts between males; or (b) being the tenant, lessee or occupier of any premises, knowingly permits the premises or any part thereof to be used as a place of resort for the commission of indecent acts between males; or (c) being the lessor or landlord of any premises, or the agent of the lessor or landlord, lets the premises or any part of the premises with the knowledge that the premises are to be used as a place of resort for the commission of indecent acts between males, or that some part of the premises is to be so used, or is wilfully a party to the continued use of the premises or any part thereof as a place of resort for the commission of the indecent acts.'*

⁵ US Department of State , Bureau of Democracy, Human Rights and Labor, *Country Reports on Human Rights Practices for 2014: Samoa*, 2014

<<http://www.state.gov/j/drl/rls/hrrpt/humanrightsreport/index.htm?year=2014&dliid=236472>> accessed on 19 August 2014

⁶ 'It's Inappropriate', *Samoan Observer*, 21 October 2013,

<<http://www.samoaoobserver.ws/other/newlyweds/7608-its-inappropriate>> accessed on 19 July 2014

⁷ 'Samoa's Law Updated to Tackle 21st Century Crime', *Radio Australia*, 1 May 2013,

<<http://www.radioaustralia.net.au/international/radio/program/pacific-beat/samoas-law-updated-to-tackle-21st-century-crime/1124062>> accessed on 19 August 2015

⁸ 'Samoan fa'afafine reject same sex marriage', *Radio Australia*, 25 April 2013,

<<http://www.radioaustralia.net.au/international/radio/program/pacific-beat/samoan-faafafine-reject-same-sex-marriage/1121736>> accessed on 19 July 2014

⁹ Netzler-lose, J., 'If it's not broken, Don't fix it', *Samoan Law Reform*, 4 December 2011,

<<http://www.samoalawreform.gov.ws/News/Media/Ifitsnotbroken,Dontfixit/tabid/6878/language/en-US/Default.aspx>> accessed on 19 July 2014

¹⁰ Ibid n 2

¹¹ US Department of State, Bureau of Democracy, Human Rights and Labor, *Country Reports on Human Rights Practices for 2013: Samoa*, 2013,

<<http://www.state.gov/j/drl/rls/hrrpt/humanrightsreport/index.htm?year=2013&dliid=220226>>

accessed on 19 July 2014

¹² Under Section 49(3) of Crimes Act 2013 an unlawful sexual connection with another person, and consequently a sexual violation, only occurs if that person has sexual connection with the other person without the consent of that other person freely and voluntarily given.

¹³ ILGA, *State Sponsored Homophobia: A World Survey of Laws: criminalisation, protection and recognition of same-sex love* (10th Ed.), May 2015, p. 125

¹⁴ APF, APCOM, UNDP, *Report of the Workshop on: The Role of National Human Rights Institutions in Promoting and Protecting the Rights, including Health, of LGBTI People in Asia and the Pacific*, February 2015,

<<http://www.asia->

[pacific.undp.org/content/dam/rbap/docs/Research%20&%20Publications/hiv_aids/rbap-hhd-2015-role-of-nhris-promoting-protecting-rights-lgbti-ap-report.pdf](http://www.asia-pacific.undp.org/content/dam/rbap/docs/Research%20&%20Publications/hiv_aids/rbap-hhd-2015-role-of-nhris-promoting-protecting-rights-lgbti-ap-report.pdf)>, p. 18 , accessed on 19 August 2015

¹⁵ See Section 20(2). The text of the law is : [http://www.parliament.gov.ws/new/wp-](http://www.parliament.gov.ws/new/wp-content/uploads/01.acts/acts%202013/Labour_and_employment_relations_act_2013_-_eng.pdf)

[content/uploads/01.acts/acts%202013/Labour_and_employment_relations_act_2013_-_eng.pdf](http://www.parliament.gov.ws/new/wp-content/uploads/01.acts/acts%202013/Labour_and_employment_relations_act_2013_-_eng.pdf)

¹⁶ UNHRC, *Report of the Working Group on the Universal Periodic Review: Samoa - Addendum*, (21 September 2011) UN Doc A/HRC/18/14/Add.1, para. 29 and 30

¹⁷ UN Human Rights Council, *Report of the Working Group on the Universal Periodic Review: Samoa*, 11 July 2011, UN DOC A/HRC/18/14, para. 22