

DOMESTIC VIOLENCE IN TONGA - WHAT ARE WE DOING?

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I. INTRODUCTION

Tonga is committed to gender equality and ending violence against women. The national gender and development policy (2014-2018) recognizes that domestic violence is a “rampant problem, largely under reported, which affects our family, our society and our economy.”¹ One of the outputs of the policy is to enact measures to “eliminate domestic violence and provide services to the victims.”² In compliance with these obligations, Tonga adopted the Family Protection Act (FPA) in 2013. It came into force in July 2014 and provides the legal framework for the protection of survivors of domestic violence. This progress towards protection of women from domestic violence has been recognized in the third Universal Periodic Review for Tonga in 2018. One of Australia’s recommendations was for Tonga to prioritize work to eliminate violence against women, and to improve gender equality.³

Recognizing the importance of the work towards elimination of violence against women and girls, and to improve gender equality, the Family Protection Legal Aid Centre (FPLAC) (“the Centre”) was established in 2018 by the Ministry of Justice. The Centre began as a joint project between the Ministry of Justice and the Pacific Community, Regional Rights Resource Team (SPC/RRRT), now the SPC Human Rights and Social Development Division (SPC HRSD). The main objective of the Centre is to “increase access to justice” for survivors of domestic violence (“DV”) and gender-based violence (“GBV”) in Tonga, through the provision of quality free legal advice and legal representation in court. The Centre is the first of its kind to be established in Tonga and in the whole of the Pacific.

The Centre opened to the public on 12 March 2018 and initially ran as a pilot project until 26 February 2019. Following the Cabinet Decision on 21 November 2018 the Centre was approved to run for another three (3) years and thereafter the Ministry of Justice absorbed it from 1 July 2022. The Centre’s objective aligns with the Tonga Strategic Development Framework 2015-2025 (Organizational Outcomes 3.2) which states:

Strengthened implementation and enforcement of law and order in a more inclusive, fair and transparent manner which helps resolve disputes, more effectively punishes and rehabilitates those who have broken the law, while supporting the population to go about their legitimate daily business without fear or favor (TSDF organizational outcome 3.2.).

The Centre is a key implementing agency of the Family Protection Act 2013. Its mandate strengthens the implementation of the Act and the enforcement of the law against perpetrators of violence. It creates an enabling environment for survivors through court orders that resolve disputes for the most part, and punishes perpetrators for their abusive behaviours.

The Centre also provides a secondary prevention programme through its public and community outreach and education programme. This programme is aimed at raising awareness of domestic violence, relevant legislation and the primary response to survivors by way of protection orders that are available under the FPA 2013 and other legal assistance under allied family laws.

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¹ The revised national gender and development policy, 2014-2018, p. 5.

² The revised national gender and development policy, national plan of action (2014-2018), p. 3.

³ Report of the Working Group on the Universal Periodic Review: Tonga, 2018, UN Doc/ A/HRC/38/5, para. 94.58.

The Centre collaborates with key partners and relevant stakeholders as part of the whole-of-government response to domestic violence. The visibility of the Centre through these programmes and collaboration with other agencies both from government and non-government organizations is crucial to raise more awareness and ensuring that the Centre's services are recognized and taken advantage of by those who need it the most.

It should be noted that due to the complexity and sensitivity of family matters, clients are encouraged to consider proceeding to court as a last resort. This approach produces favourable outcomes for both parties and for the children of the marriage or family, when children are involved.

The Centre has achieved a lot since its establishment in 2018, particularly in providing legal assistance for survivors of DV and GBV; however, there are prevailing challenges that require serious consideration and these are highlighted in this paper.

II. CURRENT TRENDS AND CHALLENGES OF DOMESTIC VIOLENCE IN TONGA

A. Current Trends of Domestic Violence in Tonga

A study conducted by Ma'a Fafine moe Famili in 2009 highlighted that violence against women is prevalent. A few results are highlighted below⁴:

- In their lifetime, 79% of Tongan women and girls have experienced physical or sexual abuse;
- 68% of Tongan women and girls are affected by physical violence perpetrated by their fathers or teachers;
- Perpetrators of violence are likely to be well-respected and educated Tongan men;
- 56% of all respondents to the survey, both women and men alike, agreed with the statement that a husband could beat his wife if she was unfaithful;
- 83% of women agreed that a good wife obeys her husband even if she does not agree; and
- 61% of women respondents believe that a wife can refuse to have sex with her husband if she does not want to.

Analysis of these result indicates the perception that the cause of domestic violence is predominantly gender inequality – gender roles and the power dynamics of women and men in the Tongan society. Of course, other factors identified to have contributed to domestic violence stem from alcohol, family expectations and having children out of wedlock, to name a few.

From the recent MISC survey conducted in 2019, the following were highlighted:

- 35.9% of women from the ages 15-49 years old experienced physical violence since the age of 15 perpetrated by anyone; and
- A total of 257 women from 2,872 who participated in the survey experienced sexual violence since the age of 15.

It is important to note that only one woman among all women aged 15-49 from each household was randomly selected for the survey. It is observed that there may have been a gap in encompassing all survivors of domestic violence in a household.

⁴ Jansen, H.A.F.M., Johansson-Fua, S., Hakofa-Blake, B., Ilolahia, G.R. (2012). *The National Study on Domestic Violence against Women in Tonga 2009: Ma'a Fafine mo e Famili (For women and families)*.

From the Centre's perspective, the number of clients seeking assistance against perpetrators of domestic violence have increased since its establishment in 2018. It is observed that domestic violence reported to the Centre is still under-reported due to many reasons, including the stigma of being labelled a domestic violence survivor, the economic and social circumstances of the survivor, and the pressure from external families as to name a few. The Centre works on the consent of the survivor and therefore cannot do much if the survivor does not come forth or withdraws from seeking assistance.

B. Challenges Faced by the Centre in Preventing and Responding to Domestic Violence

The Centre is a key implementing agency of the FPA 2013 and is mandated by FPA 2013, which is the governing legislation of DV and GBV in Tonga. Other family-related laws utilized by the Centre to assist with providing other legal options include:

- Births, Deaths and Marriage Registration Act (Cap. 17.02)
- Divorce Act (Cap. 17.24)
- Guardianship Act (Cap. 17.09)
- Magistrate Court Act
- Maintenance of Illegitimate Children (Cap. 17.18)
- Maintenance of Deserted Wives (Cap 17.15)
- Criminal Offences Act

As aforementioned, the Centre's main objective is to increase access to justice for survivors of domestic violence, both men and women, girls and boys. It is not without its challenges and barriers.

The primary law addressing domestic violence and gender-based violence is the FPA 2013. Although this law protects all family members, introduces protection orders, explains police responsibilities, and advances the health, safety, and well-being of victims of domestic abuse and related issues, it still leaves gaps when it comes to addressing issues pertaining to children and youth.

It does not particularly address the requirements of teenagers and young adults with regard to responding to and preventing GBV. According to the 2019 MICS, young women between the ages of 20 and 24 reported the highest rates of partner violence.⁵ Furthermore, according to the survey, 23.2% of Tongan children aged 14 and younger said they had been punished with severe physical violence, and 86.6% of the youngsters said they had received violent methods of discipline. Thus, the FPA 2013's definition of domestic violence under Section 4(b) as acts "*beyond the reasonable expectations and acceptances of family and domestic life*"⁶ significantly undermines the rights of children and young people to protection in the context where physical and violent discipline is normalized and considered a part of family and domestic life.

Health professionals and social service providers have a duty of care to report cases of domestic abuse and to take appropriate action, as stipulated in the FPA 2013. This includes the service provider's obligation under section 17(1b) to file a report to the authorities on behalf of the child victim and recommend them for counselling or medical attention. However, the FPA 2013 offers very little to no guidance on particular strategies and actions for assisting children and young people in connection with GBV and DV.

Key outcome 4.1 of the Tonga National Youth Policy & Strategic Plan of Action 2021–2025 states that "*Measures are in place to eliminate gender-based violence and user-friendly social services are in place for youth victims / survivors.*" It places special emphasis on gender-based violence. Nevertheless, this plan does not go into great detail regarding the actual tasks that will be carried out or that might be observed.

⁵ Tonga Statistics Department. (2020). *Tonga Multiple Indicator Cluster Survey 2019, Survey Findings Report*. Nuku'alofa, Tonga: Tonga Statistics Department.

⁶ Section 4(b) of Family Protection Act 2013 (2020 revised edition).

Under Key Action 2.2.6 of the National Women's Empowerment and Gender Equality Tonga Policy and Strategic Plan of Action 2019-2025 mentions young people, and specifically girls, in its course to "*Continue to raise awareness and support implementation of the Family Protection Act, in particular as it pertains to the prevention and response components of the Act, and to include young people in its implementation.*"⁷ The policy does not, however, address the specific risks that young people have in relation to GBV and DV or the possibility that they require preventative and response measures that are specially designed and resourced. In turn, this does not assist with the Centre's delivery services to young people and children who seek the assistance of the Centre.

As a signatory to the Convention on the Rights of the Child, Tonga is obligated to guarantee that every child is shielded from all forms of sexual exploitation and abuse (Article 34), from physical or mental violence, injury, or abuse (Article 19); from torture and other cruel, inhuman, or degrading treatment or punishment (Article 37); and from school discipline that is applied in a way that respects the child's human dignity (Article 28). Having said that, Tonga has the lowest criminal responsibility age in the world, at seven years old and under Tongan law, minors can be sentenced to death or whipping. Contrary to the convention, it is lawful and permissible for children under the age of 18 to marry. Upon reviewing Tonga's first report on implementing the Convention on the Rights of the Child, the Committee on the Rights of the Child (2019) observed that one of the most urgent issues requiring legal reform in Tonga was violence against children.

Additionally, the FPA 2013 remains the most responsive piece of legislation to child protection issues in Tonga in the absence of any specific legislation for child protection. It is envisaged that Tonga will eventually address this huge gap in the interest of children who are mostly affected both mentally and physically as the result of family violence.

The absence of adequate and comprehensive services to complement the FPA 2013 to safeguard children only magnifies the challenges facing the Centre to effectively provide its services. The services to children demand the collaboration of other service providers and the Centre has often acknowledged the members of the Case Management Committee (CMC) for their support – Women and Children's Crisis Centre ("WCCC"), the Tonga National Centre for Women and Children ("TNCWC") and the Domestic Violence Unit ("DVU") (Police). An example of the challenges faced by the Centre in terms of effectively providing its services to children is when both natural parents are not in a position to care for their child, and it is in the best interest of the child to not be in their care. In such cases, there is no actual place for the children to be taken. A temporary arrangement is the utilization of the WCCC safe house, but this is not a long-term arrangement. A child in this situation is considered lucky if there are relatives willing to take them in. Even with this, the child's life is disrupted.

While there is legislation in place that prohibits corporal punishment in school, this still happens. The FPA 2013 cannot assist survivors of school violence, particularly those who are in boarding schools, from persons in authority. Section 4 of the FPA 2013 stipulates that a victim and a perpetrator must be in a domestic relationship to constitute any acts of violence as domestic violence. Children who are in boarding schools spend most of their time in school with teachers and prefects as the caretakers, only coming home for weekends. This relationship though is not recognized in the FPA 2013 as a domestic relationship and the students are subjected to violence and do not have the choice of applying for a protection order to ensure that these actions stop.

In March 2022, the Tonga National Child Protection Policy ("TNCPP") committee was formed, chaired by the Ministry of Justice. The members of this Committee included UNICEF, the Ministry of Education, the Police, the WCCC, Save the Children Australia, the Attorney General's Office, the Ministry of Health, SPC, and Auckland University. A children protection policy was developed, and many consultations were held with the community. It is anticipated that policy goals will be reached in collaboration with all sectors, stakeholders and communities, with the Government of Tonga focusing on the following Policy Priority Areas for the duration of the policy:

⁷ Ministry of Internal Affairs, Tonga. (2019). *National Women's Empowerment and Gender Equality Tonga Policy and Strategic Plan of Action 2019-2025*. Ministry of Internal Affairs, Tonga & Pacific Community.

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1. Comprehensive legal and policy framework for child protection.
2. Child protection organizational structures at the national and community levels.
3. Families and communities are empowered to promote well-being of children and prevent abuse and neglect.
4. Continuum of child protection services for children and their families (prevention, early intervention and response).
5. Well-trained and resourced child protection workforce.

A final draft has been tabled with the Cabinet but for many months now, there has been no indication of endorsement of this policy by the government.

Furthermore, as a part of its services, the Centre conducts a series of awareness programmes which includes going out to the communities and schools, as well as conducting a series of television and radio talk-back shows. The talk-back shows were quite effective, in that it allowed the public to share their own views on the FPA 2013. However, there appeared to be a common misconception about the purpose of the FPA 2013 — that the legislation is dividing up families and is the main cause of much of the youth offending. It should be noted that the Domestic Violence Unit of the Ministry of Police was engaged to respond to issues raised by the public in respect of youth offending and to which the police did not agree with the perception that the FPA 2013 is a major contributing factor to youth offending.

Communication with the outer islands remains a recurring challenge due to the limited capacity of the Centre to reach clients in the outer islands and remote communities. There are only two offices, one in Tongatapu and Vava'u. It should be noted that the establishment of the Vava'u Office in 2022 has helped tremendously in reaching clients in Vava'u. However, the Centre will benefit from more staff and in particular two more lawyers to ensure that the Centre has the capacity to provide the legal services as its mandate, and to maintain a quality service.

It should be noted for future considerations that establishing offices in Ha'apai and 'Eua will improve the response to survivors and clients in these islands, considering that there are also smaller islands forming part of these islands.

The Centre's primary response to its clientele is the FPA 2013; however, there are other related laws used to assist clients, particularly those who experience economic abuse and need maintenance. There is a need to reform some of the family laws, particularly the Maintenance of Deserted Wives Act and the Maintenance of Illegitimate Children's Act. These laws need to be responsive to the needs of women and children at risk of economic abuse. The procedure for processing applications for maintenance is lengthy and complex. The enforcement of orders is also lengthy and costly. Women who seek assistance under these laws are already in financial hardship. These lengthy and costly processes serve as deterrence and a barrier to women coming forth to seek assistance.

III. RECOMMENDATIONS AND POSSIBLE SOLUTIONS

The following recommendations are made as possible solutions to the challenges faced in preventing and responding to domestic violence:

- Tonga should evaluate and remove outmoded legislation that contradicts international human rights responsibilities, including the Convention on the Rights of the Child. To avoid unexpected repercussions, legislative reforms should involve engagement with civil society and major population groups, as well as a gender impact assessment.
- Family Law Reforms

- Develop a standalone, cost-effective national plan or strategy to prevent and respond to gender-based violence, coordinate with the Ministry of Health, and address GBV in emergencies (GBViE).
- Consider revising the Family Protection Act (2020 revised edition) to eliminate the criterion for violence to be “beyond reasonable expectations and acceptances of family and domestic life” from the definition of family violence (section 4).
- Consider revising the Family Protection Act to include children and teachers in boarding schools as having a domestic relationship.
- Endorsement of the Tonga National Child Protection Policy by the Government of Tonga.
- Establish Legal Aid Centres in the outer islands, Ha’apai and ‘Eua.

IV. CONCLUSION

It is clear that domestic violence (DV) is one of the most common and yet concealed human rights violations, affecting one's health, economy education and personal development. While the immediate impact is personal, the prevalence of DV means that it has terrible consequences in families, communities and around the world. Addressing violence against women is an issue for public health, human rights, economics and public policy. Domestic violence and gender-based violence reflect and perpetuate gender inequity. They limit women's ability to exercise their rights and freedoms. That is, violence against women undermines women's ability to participate in development and peace. Furthermore, it is an important public health issue, affecting women's health, especially sexual and reproductive health, as well as their mental health. Countries cannot achieve their full potential unless women are given equal opportunities to engage in society, and the cost of violence will continue to stymie national development efforts as violence against women undermines human and economic growth.

Therefore, a collective approach by all relevant agencies, individuals, families, communities, government ministries and non-government organizations must be made to eliminate domestic violence and gender-based violence in our society.