

# **A Study in Ifoga: Samo's Answer to Dispute Healing**

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Leilani Tuala- Warren

**Te Mātāhauariki Institute  
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Number 4  
2002

**TE MĀTĀHAUARIKI**

The logo consists of three concentric ovals. The outermost oval is a bright green color, the middle one is a slightly darker shade of green, and the innermost one is black. The text 'TE MĀTĀHAUARIKI' is written in white, uppercase letters across the center of the innermost black oval.



# **Te Matahauariki Institute Occasional Paper Series**

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**A STUDY INTO THE IFOGA:  
SAMOA'S ANSWER TO DISPUTE HEALING**

***Leilani Tuala-Warren***

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# **A Study into the Ifoga: Samoa's Answer to Dispute Healing**

**Leilani Tuala-Warren**

## **SYNOPSIS**

### **Research Proposal**

To investigate the principles behind the Samoan *ifoga*, in order to ascertain whether this cultural practice can be implemented into the New Zealand Criminal Justice System.

The *ifoga* or traditional Samoan apology as it is known to outsiders to the Samoan culture is so Samoan and unique in its operation that it is both revered and taken for granted at the same time by the Samoan people. At least this is my observation as a young Samoan, born and raised in Samoa. My first exposure to the *ifoga* came surprisingly late in life when I started practicing as a State Solicitor for the Attorney General's Office in Samoa. The *ifoga* was a word, which I felt was synonymous with defence counsel's plea in mitigation. One thing I could be sure of nine times out of ten was the mention by defence counsel of an *ifoga* as a sign of severe remorse and regret by the offender. The court's response to this was always an acknowledgment of the *ifoga* as one of the factors that would be taken into account in sentencing. However it was made clear by His Honour (usually Chief Justice Patu Tiava'asue Falefatu Sapolu) that the *ifoga* would be only one of the many factors that would be taken into account in mitigation. Despite this, I always got the distinct impression that his thorough and respectful way of acknowledging the *ifoga* meant that he was giving it more weight than he was letting on. Why is such a seemingly common practice treated almost in a class of its own. What is it really?

To be honest these questions did not plague me at the time until my return to New Zealand and my being approached by Judge Brown to look into this uniquely Samoan practice that is apparently also prevalent in South Auckland. Thus my journey began into looking behind the phenomenon.

## **Scope**

The people interviewed for this research have been limited to *matai* in Samoa.

## **Objectives**

Secondary resources that deal with this subject are predominantly descriptive in nature. For such a widely practiced cultural act, thorough analysis is lacking, with the exception of a research paper conducted by Anisi Kisa. However, is there a need to dissect this cultural practice? In questioning this, I now endeavour to do that which I question. If this cultural practice can be better understood by other cultures, then perhaps this better understanding of a unique cultural practice can normalise what may seem to be quite foreign and frightening to other peoples living alongside Samoans in New Zealand. The aim ultimately is to ascertain whether this practice is viable to be implemented into the legal system of New Zealand, and if so, how it is to be implemented.

Predictably then, what will be dealt with in this paper is the practice of the *ifoga* in its contemporary form (taking into account the influence of Christianity, the *matai* system and overseas educated Samoans), how it features in the theoretical debate of individualism versus collectivism, and its place within the larger framework of Restorative Justice. Finally, it will be a look at what place it should hold in the legal system of New Zealand.

## **Limits and Boundaries**

As with any research that is based on primary sources, the researcher is faced with the dilemma of ascertaining how many interviews are sufficient in order to as accurately as possible, analyse a concept. This flexibility can be perceived as a limitation, and at this initial stage of the research, this dilemma is causing anxiety. A purely subjective judgment will be made in this case, which may be questioned at a later stage.

Another limitation is self-imposed in that the writer has chosen to interview *matai* in Samoa only. The reason for this is because these are the people who are authoritative figures in Samoan society. Their direct experience in decision making as to whether an *ifoga* is performed or not is vital. However in limiting the interviewees, the writer is well aware that it may result in research that is one-sided in its perspective and viewpoints. Due to the fact that the majority of *matai* in Samoan society are male, the perspective of Samoan women may be lacking. In addition, *matai* are not the only people who are involved in an *ifoga*. Other members of society who are not *matai* may be equally involved and may have valuable insights into the *ifoga*. These people will not be interviewed because of time constraints. This is a significant limitation of this research.

Lastly the writer feels that it is imperative to mention the intentional focus away from the tangata whenua of New Zealand. Firstly the writer has no mandate to speak on the experience of the tangata whenua and secondly, Maori scholars have written on this area. Suffice to say that the principles of *ifoga* are similar to marae justice. The victim and his/her whanau confront the offender and his/her whanau. The offender and the whanau take responsibility for the crime, and work to find a point of reconciliation to restore the mana of the victim and their whanau.<sup>1</sup>

### **Theoretical Basis**

At this point what springs to mind is the age-old juxtaposition between individual rights and collective responsibility. Another issue that is brought to mind is how this unique practice is situated within, or how it contributes to the concept of 'Restorative Justice'. Restorative Justice as a recent idea in the Western world seems to be dripping off the pens of academics everywhere.

### **Methodology**

The Samoan people appear to keep their knowledge of the *ifoga* in their heads. I feel that to look at principles underlying the *ifoga*, the best method in which to undertake this study is to seek out primary sources by approaching the Samoans themselves, with an interview questionnaire. The questionnaire is written in the Samoan language with translations included. A copy of this questionnaire is attached as Appendix A. A consent agreement, also written in Samoan will be discussed before the interview with the interviewee. When signed, this agreement will allow me to use any information gathered during the interview, in a research paper. A copy of this consent agreement is attached as Appendix B. I propose to use a dictaphone to tape all interviews. This will allow me to extract the relevant parts of an interview.

The above methods will be utilised in an attempt to extract the uniquely Samoan and untold story behind the *ifoga*, from the people who have the knowledge.

### **Obstacles**

I propose to interview between 10 and 15 *matai* (chiefs) or knowledgeable elders in Samoa. The reasons is that given the length of my stay in Samoa as well the time of year being the festive season, it is anticipated that delays will be experienced as people prioritise during this time.

Given the constraints of time, I was not able to interview any *matai* in New Zealand. However I believe that their input and knowledge of the *ifoga* would be equally important in this area. Before any moves are made to recognise the *ifoga* in New Zealand, they must be consulted. Those who work in the Justice Departments in New Zealand and Samoa, like

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<sup>1</sup> Indigenous peoples and the Law: Article: Understanding the Samoan Culture

Judges, lawyers, Police and Probation Officers should also be consulted. It is important that the views and attitudes of these people are included in any further study.

### **Tentative Conclusions**

The most difficult area of this research is pre-empting the final outcome by stating tentative conclusions, but this is a necessary evil. These tentative conclusions are;

1) That the *ifoga* is so Samoan and unique in its operation and rationale that any attempt to implement it into a legal system that is shrouded by another culture is bound to be problematic. It is born of a system that has a complex weave of connections between *matai* and *aiga*. Its value is found in the maintenance of these connections. Such connections are found in New Zealand only to a small extent amongst Samoans.

2) Recognition of the *ifoga* (as practiced by Samoans) in New Zealand legal system is long overdue. By recognition I mean for the practice to be taken into account in sentencing in the same way in which it is recognised by the courts in Samoa.

3) It is possible for the *ifoga* or a practice similar to it to be available to other New Zealanders as a method of dispute healing. I deliberately choose not to use the word 'resolution' because it may be unrealistic to expect other cultures to adopt the *ifoga* and understand its significance in resolving disputes. I use the word 'healing' because it connotes a gradual process. The *ifoga* may be considered as one step towards the healing of a dispute. The form that the *ifoga* will take will have to be significantly different from its current form in order to preserve its integrity and cultural importance for Samoan people. A uniquely 'kiwi' interpretation of the *ifoga* needs to be adopted and this interpretation must be decided by the parties involved. However, this form must be prevented from taking on orthodox procedures so that it loses its flexibility.

4) The place of the *ifoga*, or a practice similar to it, as a viable method of dispute healing will only come about with education and awareness. This responsibility lies with those who work within the Justice system.

## REPORT ON *IFOGA* RESEARCH

Conducted 7th December 2001 to 24th January 2002.

### OBJECTIVES-

The content of Chapters 3 and 4 of my research paper rely predominantly on the interviews conducted. My objective in conducting the interviews was to find out;

- The origin of the *ifoga*
- The process, use and value of the *ifoga*
- The influence of Christianity
- The influence of outside cultures
- The contemporary *ifoga*
- The impact of the *matai* system on the *ifoga*
- The concept of 'va'

### RESULTS-

My aim was to interview 10-15 *matai*. I interviewed a total of 10 *matai*. They are;

1. Asofou So'o, 44 years from Savaia Lefaga. He is the Director of the Institute of Samoan Studies at the National University of Samoa at Le Papa-I-Galagala
2. Toelupe Vaitoa, 86 years from Malie. (He could not recall but has participated in numerous *ifoga*)
3. Tuala Leuso, 75 years from Safaatoa Lefaga.(Participated in two *ifoga*)
4. Teo Magele Eteuati, 66 years from Vaiee Safata.(Participated in two *ifoga*)
5. Tologata Galuefa, 67 years from Pata Falelatai.(Participated in two *ifoga*)
6. Vaatiuola Lautolo Misi, 56 years from Mulifanua.(Participated in two *ifoga*)
7. Lealamisa Lika, 76 years from Fasitoo-Uta.(Participated in three *ifoga*)
8. Agafili Laau Tuitolovaa, 56 years from Lelata Apia.(Participated in three *ifoga*)
9. Faamausili Toelupe, 49 years from Malie and Vailoa. (Participated in two *ifoga*)
10. Misa Tuala Misi, 60 years from Sapapalii Savaii. (Participated in one *ifoga*)

All interviewees have participated in either taking or accepting an *ifoga*, with the exception of Asofou So'o who was interviewed on his perspective of the *ifoga* as a Samoan academic. These interviewees were approached on the basis that they have been involved in *ifoga*, they are held in high regard by fellow Samoans, and they are all *matai* of high standing in their respective villages.

**Some of the information gathered has differed vastly, but all viewpoints will be respected and acknowledged.**

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CHAPTER 1  
INTRODUCTION

Before any recommendations can be made on how to bring the *ifoga* into the realm of the current criminal justice system in New Zealand, an understanding of Samoan society is essential. Chapter 2 is an attempt to explain the more salient features of the Samoan way of life. Chapters 3 and 4 are a look into the *ifoga*, from its origin to its contemporary form. Chapter 5 explores how the *ifoga* features in the theories of individual rights and collective responsibility, as well as its place with Restorative Justice. Its implementation into the legal system of New Zealand will be dealt with in Chapter 6. Finally the last Chapter will state some of the conclusions that the writer has come to after completing this research.

## CHAPTER 2 UNDERSTANDING SAMOAN SOCIETY

### 2.1 Common law and customary law

Samoa society is one in which a dual legal system operates. On the one hand, there is the common law system whereby the Attorney General is the country's legal adviser and the chief prosecutor for government. Law and order is maintained by the Police Department.<sup>2</sup>

On the other hand there exists customary law in the form of village *fonos*(councils) which are comprised of the *matai* (chiefs) known as *Ali'i* and *Faipule* of that village.<sup>3</sup> Custom in the form of the village *fono* is seen to be a 'major instrument of law enforcement'.<sup>4</sup> It is agreed that without these *fono*, Samoa would require many times the Police force it currently has to maintain order.<sup>5</sup>

It is believed that for society to exist and thrive, there must be some rule of law with authority vested in some individual or body. These rules or conventions existing in the various countries have become recognized as the customs of the people.<sup>6</sup>

The village *fono* derive their authority from custom and usage. Such customs and traditions are implicitly and explicitly recognised and protected by the Constitution as well as the Samoan Village Fono Act 1990. The preamble to the Constitution reads- "Whereas the Leaders of Western Samoa have declared that Western Samoa should be an independent State based on Christian principles and Samoan custom and tradition"<sup>7</sup> Samoa's constitution is based on two broad principles:

- (i) Christian principles;
- (ii) Samoan customs and traditions (or Samoan culture, ceremonies and practices)<sup>8</sup>

The long title to the Village Fono Act 1990 reads as follows;

An Act to validate and empower the exercise of power and authority by Village *Fono* in accordance with the custom and usage of their villages and to confer or grant certain powers and to provide for incidental matters.

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<sup>2</sup> Situation Analysis of Human Development 1998 United Nations Apia, Samoa

<sup>3</sup> Sapolu, FM 'Adjudicators in Western Samoa' in Pacific Courts and Legal Systems by Powel G & Pulea, M(eds) University of the South Pacific, Suva, 1988 60

<sup>4</sup> Polu, L 'Cultural Rights and the Individual in the Samoan Context' in Culture, Rights and Cultural Rights: Perspectives from the South Pacific by Wilson, M & Hunt, P (eds) Huia Publishers, Wellington 2000.

<sup>5</sup> Pacific Island Law Officers meeting 18-22 August 1986. Held in Apia, Western Samoa.

<sup>6</sup> Idem

<sup>7</sup> Idem

<sup>8</sup> Ibid 4 at 58

The Village *Fono* is defined as the assembly of the *Ali'i* and *Faipule* of a village.<sup>9</sup> The *Fono* has the power to impose penalties for village misconduct. It has the power to impose fines in terms of money, *ie toga* (fine mats), animals or food, and to order the offender to undertake any work on village land.<sup>10</sup> Section 8 specifies that where punishment has been imposed by a Village *fono* in respect of village misconduct by any person and that person is convicted by a court of a crime or offence in respect of the same matter, the Court shall take into account in mitigation of sentence, the punishment imposed by that Village *fono*. Therefore legal penalties are observed, although the courts often take into consideration the customary practice of the *ifoga* executed by the offender to the offended family as part of the penalty imposed by the village council.<sup>11</sup>

The authority of the village *fono* takes the form of decision-making on all civil disputes and offences within their respective villages.<sup>12</sup> *Fono* enforce minor sanctions on a range of offences.<sup>13</sup> Punishment by the village *fono* range from fines in terms of foodstuffs to absolute banishment of the offender from the village. Disobedience of a decision or decree of a village *fono* can result in serious consequences to the offender and sometimes to his family. However, social pressure is usually brought to bear on an offender who is minded to obey the *fono* until eventually he complies with its judgment.<sup>14</sup>

The *fono* is a collective decision-making body in the sense that each family is represented in the *fono* by a family *matai* as their voice in the decision-making process. Generally village *fono* make decisions to ensure the social and economic welfare, and the smooth and harmonious running of the village.<sup>15</sup> Their effectiveness is as good as the calibre of the village *matai* and their leadership abilities.<sup>16</sup>

The relationship between the two systems in Samoa determines to a large extent how the *ifoga* factors into the Samoan body of rules and conventions. The *ifoga* as a custom sits quite neatly within the customary law system of Samoa. Its place within the common law system is very definite as will be seen in the later discussion. Suffice to say at this point that the *ifoga* is part of both systems. Although it is a custom, the *ifoga* does not operate exclusively within the realm of customary law.

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<sup>9</sup> Samoan Village Fono Act 1990 Section 2

<sup>10</sup> *Idem* at Section 6

<sup>11</sup> *Supra* 2

<sup>12</sup> *Supra* 3 at 60

<sup>13</sup> *Supra* 5

<sup>14</sup> *Supra* 5

<sup>15</sup> *Supra* 4 at 59

<sup>16</sup> *Supra* 5

## 2.2 The *Faasamoa*

The *Faasamoa* and what it is, has been explained in many eloquent ways. It is ‘the essence of being Samoan’.<sup>17</sup> It is simply Samoan culture.<sup>18</sup> The *faasamoa* is an amalgamation of being Samoan and Samoan culture, and much more. The extent of what the *faasamoa* entails, is vast and often unexplainable.

However to fully understand the principles that underlie the *ifoga*, one must come to grips with the *faasamoa*. The actions of a Samoan are often judged by fellow Samoans according to the norms and conventions of the *faasamoa*. This brief section will explore some of these norms and conventions.

The *faasamoa* includes a unique attitude towards fellow human beings, unique perceptions of right and wrong, the Samoan heritage, and fundamentally the aggregation of everything that the Samoans have learned during their experience as a distinct race. It is founded on sharing and selflessness.<sup>19</sup>

The *faasamoa* dictates the way in which a Samoan views himself/herself in relationship to the rest of the world.<sup>20</sup> The core of the *faasamoa* is the *aiga* and strong identification with *aiga* is basic to the Samoan concept of self.<sup>21</sup> A Samoan's actions and views are those of his *aiga*, and individuals are judged by what *aiga* he or she belongs to. Equally the *aiga* is judged by the actions of its individuals. An example of this is found in the fact that nursing homes are virtually unheard of in Samoan society, and are viewed as an abdication of family responsibilities.<sup>22</sup> *Aiga* are expected to look after their own, whether they are elderly or sick.

Understanding the significance of the *aiga* within the *faasamoa* puts the *ifoga* into perspective. In Samoan culture, a crime committed against an individual is an affront to that individual's entire family, “corruption of the blood” is the traditional law of the land. Corruption of the blood means punishment of the criminal's innocent relatives. Before Western rule, retaliation for a crime was carried out against any member of the *aiga* of the criminal, and not merely against the criminal himself/herself. This traditional view of responsibility for crime gave rise to the *ifoga*. The Samoan view of responsibility for crime and the traditional methods of punishment and forgiveness reflected a policy preference for a society designed to engender family pressure upon individuals to behave according to social norms.<sup>23</sup>

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<sup>17</sup> Teichert, JB Across Borders: Resisting the Temptation in the Garden of Paradise: Preserving the Role of Samoan Custom in the Law of American Samoa 3

<sup>18</sup> Anisi, Kisa *Ifoga*: A Research Paper Conducted in Western Samoa. September-October 1993. Commissioned by the Auckland Regional Community Corrections Centre. 3

<sup>19</sup> Ibid 17 at 5

<sup>20</sup> Ibid 18

<sup>21</sup> Ibid 17 at 6

<sup>22</sup> Supra 2

<sup>23</sup> Supra 17 at 6

The fundamental principles underpinning the *faasamoa* include the customary division of roles; the sharing of goods and resources so that all family members have enough for their needs; family land as the source of family identity and security, and the *matai* system that determines organisational structures.<sup>24</sup>

The concept that is explicitly present in this brief look at the *faasamoa* is how the *aiga* underlies all aspects of the *faasamoa*.

### **2.3 Samoan views on different concepts**

Samoan views on the different concepts that will be discussed stem from the *Faasamoa*. The complex weave of these concepts make any neat separation impossible.

#### **2.3.1 Justice**

Since the arrival of Christianity, justice for Samoans does not equate with revenge. It is said that community based feelings make it difficult to take a life even from one who took life from another.<sup>25</sup> Justice is seen to be done when punishment has been handed down by village *fono*.

The strong Christian beliefs which have permeated Samoan society has meant that Samoans also look to *Le Atua*(God) for justice. It is a common saying in Samoa that ‘*e tau mai lava e le Atua*’ (God will pay back either a person’s goodness or evilness).<sup>26</sup>

#### **2.3.2 Punishment**

As mentioned earlier, punishment which is handed down by village *fono* can be in the form of fines or foodstuffs. However punishment can also be the ordering of an *aiga* to do or not to do something. An extreme form of punishment is found in the Samoan custom of banishment. Banishment is a Samoan custom whereby a family is informed that they must leave the village, never to return again. The current Chief Judge, Patu Tiava’asu’e Falefatu Sapolu who is also a Samoan *matai* gave an in depth explanation about the custom of banishment:

By tradition, custom and usage, banishment is a measure of social control which is applied in the village to maintain peace, harmony and order within a family or between families, and within the village itself. It is also a measure of law enforcement within the village in a sense that banishment is a sanction which may be imposed for certain misconduct, disobedience of the rules and regulations made by the village through its ali’i and Faipule (Village Council)...<sup>27</sup>

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<sup>24</sup> Supra 2

<sup>25</sup> Global Perspectives on the Death Penalty. A Special Report by the Medill School of Journalism

<sup>26</sup> Misa Tuala Misi

<sup>27</sup> Supra 4 at 63

Revenge and punishment, are typically directed at the extended *aiga* rather than the culpable individual.<sup>28</sup>

### **2.3.3 Offending/wrongdoing**

Offending or wrongdoing is judged by several standards today. Whereas once these were judged against the accepted principles of the *Faasamoa*, offending or wrongdoing is now also judged by Christian values and beliefs, as well as Western notions of crimes as contained in the Crimes Act 1961 and administered by the Police and the court system. This is not to say that the three standards are separable. They overlap to form a value system encompassed into and known as the *Faasamoa*.

### **2.3.4 Retribution**

Retributive Justice as practiced in New Zealand is also practiced by the Courts in Samoa. This sort of justice is said to secure compensation but does little to heal the bad feeling between the parties.<sup>29</sup> However the practice of the *faasamoa* is aimed at healing the breach caused by an offence so that everything is forgiven and forgotten.

### **2.3.5 Forgiveness**

Forgiveness is the main motivation behind the performance of the *ifoga* in Christian Samoa. The Christian concept of forgiveness has replaced the fear of revenge motivation that once characterised *ifoga*.

Forgiveness is not only sought from others through *ifoga*, but is also sought from *Le Atua*. Seeking forgiveness from *Le Atua* is done regularly through attending church on Sundays, and morning and evening prayers.

### **2.3.6 Respect**

Respect for elders and *matai* is evident in Samoa through many ceremonial observances. For example, elders and *matai* are given food first and eat before the rest of the *aiga*. They are given the best food. Since Christianity, the minister of the church has commanded equal if not more respect in Samoan society. Respect for elders, *matai* and church ministers is taught and encouraged in Samoan society.

*Matai* pay each other a great deal of respect as seen in elaborate oratory during ceremonial observances. It is characteristic of a Samoan to put themselves down in oratory while elevating another. Likewise they will be elevated by someone else, but never by their own words.<sup>30</sup>

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<sup>28</sup> Supra 25

<sup>29</sup> Keesing, Felix, M Modern Samoa: Its Government and Changing Life Stanford University Press, California 1934, p252

<sup>30</sup> Asofou So'o

In relation to the *ifoga*, it is partly performed because of this respect for the status of others.

### **2.3.7 Shame and ostracism as controlling forces in Samoan society,**

Shame is a collective feeling in Samoa. It is a main factor that underlies the practice of *ifoga*. The closeness of the extended and nuclear *aiga* in Samoa is probably without parallel. The closeness is such that when one member of an *aiga* commits a wrong, the entire *aiga* is literally shamed to such a degree that it may be thought prudent to perform a public apology en masse. Familial solidarity is not just a hollow phrase in this part of the world. A natural by-product of the concept of the *ifoga* is that it has the effect of bringing the members of the nuclear or extended *aiga* closer together after the member of one *aiga* has committed a wrong upon a member of another *aiga*. It would be difficult to participate in an *ifoga* either as a member of the *aiga* making or receiving the apology without experiencing the bonds of familial solidarity.<sup>31</sup>

Samoans are extremely sensitive to being shamed,<sup>32</sup> to the extent that they feel it critical to perform an *ifoga* to lessen the shame. If they are feeling ashamed by an action of a member of their *aiga*, they must shame themselves more in an *ifoga* in order to be forgiven. The non-performance of an *ifoga* would result in greater shame to the *aiga* or village if it is found that one of its members has wronged another.

### **2.3.8 The concept of ‘va’ or ‘vatapuia’ or ‘va fealoaloai’**

One of the most significant concepts in the *faasamoa* is this one of the ‘va’. Samoans conduct their lives according to the unwritten principles of ‘va’ which in its simplest form means, the maintenance of relationships between people, between *aiga*, between villages, between districts and finally between the people themselves and *Le Atua*.<sup>33</sup>

According to Toelupe Vatoa from Malie, maintenance of these connections between people is the prime motivation behind the *ifoga*. *Ifoga* are conducted to heal any breaches in the *va* between different people, *aiga* or villages.

## **2.4 The Matai System**

Samoa has evolved a unique society that is characterised by the pivotal role of *matai* or titleholders creating a network, which links all levels of society. Hence the description of the Samoan social system as *faamatai*- or *matai* system.<sup>34</sup> Samoan culture is centered in the family village, and lives through the *aiga*. Within each *aiga* there is a hierarchy of ruling chiefs known as *matai*, who are traditionally selected for their leadership ability in addition

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<sup>31</sup> Stewart, WJ ‘*Ifoga*: the Concept of Public Apology, the family and the Law in American Samoa in the Journal of International Law and Economics, [Vol 10:1973] p183

<sup>32</sup> Gerber, ER The Cultural Patterning of Emotions in Samoa (Michigan: UMI Dissertation Services, 1995) 89

<sup>33</sup> Misa Tuala Misi

<sup>34</sup> Vaai, Saleimoa Samoa Faamatai and the Rule of Law (The National University of Samoa, Le Papa-I-Galagala, 1999) 1

to hereditary birthright. When one becomes a *matai*, he/she inherits a special name or title pertaining to the office, and that name becomes his/her proper public identity.<sup>35</sup> Family land is controlled by a *matai* on behalf of his/her *aiga*, within the requirement of consensus family support for major decisions. The basic concept of communal ownership of land, and to some extent chattels, is an expression of the Samoan view that persons are conceptually part of an *aiga* rather than independent individuals.<sup>36</sup>

This basic concept difference between American culture and Samoan society, was summarized eloquently by former American Samoan Governor Peter Tali Coleman;

Our American legal system – which also operates in Samoa-is based on English jurisprudence as it has evolved over the centuries. It's a system of conflict resolution which produces clearly identifiable winners and losers. Our Samoan culture on the other hand, is based on thousands of years of the evolution of a Polynesian heritage of conflict resolution by consensus building...the unique American culture...has an even more pronounced emphasis on the rights of the individual.... The Samoan society on the other hand, has a different foundation: the *matai* system, which emphasises group responsibility.<sup>37</sup>

The same basic concept difference also exists between the dominant culture in New Zealand and Samoan society.

A number of influences have been at work to undermine the authority of the *matai*. From the first years the spiritual domination of the missions has been a limiting force. Old ideas regarding the supernatural character of chiefs have passed, or have been modified into merely ceremonial observances. Formal schooling and informal contacts with democratic ideas of the outside world have caused an assertiveness among the younger generation. The word of the *matai* is disputed increasingly, and any *matai* who attempts to restore the older condition of dominance finds himself unpopular and bereft of the workers of his household, who leave for other parts.<sup>38</sup> These influences have increased with Samoa's entry into the new millennium.

Despite these undermining factors, the *Faamatai* system in Samoa remains pivotal to the performance of an *ifoga*. The participation of the *matai* in an *ifoga* gives the *ifoga* a large degree of credibility and respectability.

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<sup>35</sup> Supra 17

<sup>36</sup> Idem

<sup>37</sup> Supra 17

<sup>38</sup> Supra 29 at 248

## CHAPTER 3

### THE *IFOGA*

#### 3.1 Definition-

My understanding of what an *ifoga* is, before a referenced definition is sought, is that it is a ceremony in which an apology in the *faasamoa* or Samoan way is offered. It involves *aiga* and villages rather than individuals. The offending may have been carried out by an individual upon another individual (which is often the case), but the *ifoga* encompasses and involves more than those individuals. An *ifoga*, simply stated, is a ceremonial public apology rendered to the injured person, if living, and his *aiga*.<sup>39</sup>

The extended *aiga* of the offender rallies together to perform a ceremony which belittles them. In a sense the individual offender becomes lost within the *aiga* or rather is shielded by the collective shield, which is his or her *aiga*.

It is commonly known by Samoan people as a 'reconciliatory act'. *Ifoga* literally means 'the act of bowing down'. The logic behind initiating an *ifoga* as soon as practicable after an offence has been committed is so that retribution is avoided and peace maintained in the village community.<sup>40</sup>

#### 3.2 Origin-

There are a few tales that explain the origin of the *ifoga*. These tales were passed from generation to generation by word of mouth. It is generally well accepted that Samoans are an oral people and written records of their history as written by them are scarce.<sup>41</sup> Samoa is an "oral" culture that respects speech because it carries its society's most cherished truths.<sup>42</sup>

One tale as told by Afioga Teo Magele Eteuati goes back to pre-Christian times. It is a story about Tuiatua and Tagaloa Funefeai. Tagaloa Funefeai took a war party to Tuiatua because Tuiatua would not make Tagaloa's unborn grandson a Tuiatua (chiefly title). Tagaloa's daughter was pregnant to Tuiatua. The war party came by canoes and headed into the district of Atua. When they came across the village of Letogo, Tagaloa's daughter on hearing about what her father was going to do, ran to the beach and held an *ie toga* out to sea to the war party. The war party retreated with no violence. Thus it has been said that from that day onwards, *ie toga* has been a symbol of peace and the humbling of oneself.

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<sup>39</sup> Supra 31 at 186

<sup>40</sup> Supra 18

<sup>41</sup> Asofou So'o

<sup>42</sup> Hibbitts, Bernard Coming to our Senses: Communication and Legal Expression in Performance Cultures 41 Emory Law Journal 4 (1992)

Another tale of the origin of this practice is that it began in Tonga. Samoans used the *ie toga* to humble themselves when the Tuitonga wanted to kill all of the Samoans who were in Tonga.<sup>43</sup>

A third tale tells of a story about Rata who was part Samoan and part Rarotongan. Rata was chasing a man who had killed his father when his canoe broke. He was near the village of Lata in Savaii when this happened, so he decided to build a new canoe from the trees of Lata's sacred forest. When he went to the sacred forest, he saw two birds sitting on two trees that were standing next to each other. Rata decided that he would use these two trees to build his canoe. He chopped the trees down and started to build his canoe. Rata worked all day but by nightfall he still had not completed his canoe, so he decided to go to Lata village to sleep and finish his canoe the next morning. When Rata returned the next morning to the area where he had been building his canoe, the trees he had cut down the day before were standing as if they had never been cut down. Confused but determined Rata cut the trees down again and started building his canoe. When night fell Rata again left his incomplete canoe and went into the village to sleep. The next morning when Rata returned, he found the trees standing as they had been before he had cut them down. Rata again cut the trees down and started building his canoe. However, once night fell on this third night, Rata decided to stay in the forest so that he could see what had happened during the two previous nights. Rata hid not far from where his incomplete canoe was. Later that night Rata was awoken by singing voices. He followed the voices and found demons holding hands, dancing and singing around his incomplete canoe. As they sang and chanted, the bits of wood that had been cut and shaved floated together until the two trees that had been cut were standing again. Rata went to the village and explained what he had seen to the villagers. He was told to take an *ie toga* to the demons and bow to them. Rata did this and the demons told him to leave and return the following day. When Rata returned the following day, the canoe was completely built. Rata then continued his journey. It was believed that spirits carried the canoe which was called *Pualele* (flying pua flower). Rata found the man who had killed his father in Tonga and it was there that Rata killed him.<sup>44</sup>

It is believed that the *ifoga* or some reconciliatory mechanism existed in Samoa before Christianity. It would not have had the elaborate features of today's *ifoga*, but it would have served the same purpose as the *ifoga*-to keep the peace. Such a mechanism would have been embraced and encouraged by Christianity as it portrayed some of the more salient features of Christian belief.<sup>45</sup> Thus when the Western form of judicial system came to be established in Samoa, *ifoga* was the traditional system of settling serious crimes between *aiga* and even

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<sup>43</sup> Agafili Laau Tuitolovaa

<sup>44</sup> Idem

<sup>45</sup> Leaupepetele Faamausili Toelupe

villages. It was a means of putting a hold on ill feelings between *aiga* or villages, and the two *aiga* or villages would continue routines as if nothing had happened.<sup>46</sup>

In the old days, it is said that an *ifoga* party would hold themselves in readiness for precipitate flight, or in the case of surrender, for sudden death according to the whim of their conquerors.<sup>47</sup> The wrongdoer's *aiga* took with them firewood and *umu* (Samoan oven). That is a symbol of death. They would put the firewood and stones outside of the victim's house to show the family of the victim that they were willing to die for one of their *aiga* member's crime.<sup>48</sup> However it is also said that the *ifoga* party would take their weapons of war to defend themselves in case the *ifoga* was not accepted. These weapons would be hidden.<sup>49</sup> This is not surprising since the *ifoga* is a matter of life and death. The *aiga* who is conducting the *ifoga* is putting their lives on the line.

In ancient times, the *ifoga* was a customary humiliation ritual that also often served to end bloodshed when a war had been lost, or to avert a war which would be futile.<sup>50</sup> A village would often chose flight in the face of an attack, leaving its houses and plantations to be destroyed, rather than apologise so abjectly. But when an *ifoga* was undertaken, it was customary that the other party should accept the gesture and agree to a peaceful settlement. A refusal, of course, meant war.<sup>51</sup>

Therefore, while the precise origin of the *ifoga* is somewhat lost in the antiquity of Samoan folklore, it seems reasonable that the *ifoga* evolved as a means for disposing of or settling situations in which a person had been injured in some way and where the dispute might become the genesis of a more serious, widespread armed encounter between villages of the parties involved. In other words, the *ifoga* became a means whereby a wrong might be forgiven in such a way that the aggrieved family felt that justice had been done without the necessity of an act of vengeance. An *ifoga* has been described as a formal gesture of self-degradation. This gesture is the greatest loss of face which a Samoan could suffer voluntarily - one out of proportion to the seriousness of most transgressions - it was never viewed lightly by either party to a dispute.<sup>52</sup> Samoans are a proud people, arguably the proudest in the world. Therefore in Samoan culture bowing to another is an extremely difficult thing to do.<sup>53</sup>

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<sup>46</sup> Samoan Service Providers Association Article: Understanding the Samoan Culture

<sup>47</sup> Supra 29 at 215

<sup>48</sup> Ibid 46

<sup>49</sup> Teo Magele Eteuati

<sup>50</sup> Supra 17 at 25

<sup>51</sup> Gilson, RP Samoa 1830 to 1900: The Politics of a Multicultural Community (Oxford University Press, Melbourne, 1970) 49

<sup>52</sup> Supra 51

<sup>53</sup> Asofou So'o

### 3.2.1. The process of an *ifoga*

Every *ifoga* performed is unique.<sup>54</sup> While the specifics may vary in terms of the size of the *ifoga* party, the gifts taken and the length of time before it is accepted, there is a general process that is common to all *ifoga*, which has been gathered from information supplied by interviewees.

The decision to take an *ifoga* belongs to the *matai* of the *aiga* or village. Whether the *ifoga* is by the *aiga* or the village of the offender depends on the seriousness of the offence and the perception of who the aggrieved party is. The decision to take an *ifoga* is not one that is easy to make. There will be some *matai* in the *aiga* who will say that they would rather die than bow to another *aiga*. The pros and cons will be weighed up until finally a decision is made.<sup>55</sup> Once the decision is made to take an *ifoga*, the *ifoga* party will travel to the *aiga* or village of the aggrieved party in the early hours of dawn. The *ifoga* party will always be seated on the ground under the *ie toga* before sunrise. The timing is crucial as it is believed to be the safest time when the receiving party is sleeping.<sup>56</sup> The decision as to who is covered by the *ie toga* also belongs to the *matai*. Sometimes all the *matai* are covered and sometimes only the highest *matai* of the *aiga* or village is covered. The offender may or may not be present depending on whether the offence is serious. If the offence has resulted in death, the offender will never go as this is believed to incite feelings of anger or revenge from the receiving family.<sup>57</sup>

When the receiving party realizes what is happening, the *matai* will meet amongst themselves and decide whether to accept or reject the *ifoga*. As mentioned earlier, nowadays *ifoga* are predominantly accepted very quickly.<sup>58</sup>

A speaking *matai* from the receiving party will then come outside and address the *ifoga* party. This can be a lengthy oratory before he removes the *ie toga* which is covering the *ifoga* party. The *ifoga* party will be invited inside the *fale* and the exchanges of oratory and gifts will take place. The *ifoga* party will give money, boxes of herring (*pusa apa*) and kegs of corned beef (*paelo*) imported from New Zealand. This will be reciprocated by the receiving party giving *pasese* (monetary gift).<sup>59</sup> The money given by the *ifoga* party is not intended as a financial settlement but is more of an indication of real remorse on the part of the wrongdoer's *aiga*. The receiving party would probably serve food to the guests and upon conclusion of the meal, the *ifoga* party would take its leave.<sup>60</sup>

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<sup>54</sup> Supra 18 at 5

<sup>55</sup> Ibid 53

<sup>56</sup> Tologata Galuefa

<sup>57</sup> Vaatiuola Lautolo Misi

<sup>58</sup> Idem

<sup>59</sup> Leaupepetele Faamausili Toelupe

<sup>60</sup> Supra 31 at 186-188

### 3.2.2. Use and Value of the *ifoga*

The *ifoga* is used predominantly to stop further or any violence from occurring after an offence or wrongdoing has been committed.<sup>61</sup> It is the most effective way of curbing any anger from the *aiga* of the victim. There still exists the fear of revenge motivation behind the *ifoga*. Coupled with this is the need to maintain the *va* or connection with others.<sup>62</sup> There is the need to protect not only the *aiga* of the offender but most importantly the offender themselves.<sup>63</sup> An accepted *ifoga* means that the incident will never again be mentioned by either *aiga*. Members of those *aiga* will respect the decision of their *matai* to accept the *ifoga* and will treat that decision with utmost respect.<sup>64</sup> The *ifoga* party is able to carry on knowing that they have been forgiven by the receiving party, and that there is no longer any ill feeling towards them.<sup>65</sup>

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<sup>61</sup> Agafili Laau Tuitolovaa & Tuala Leuso

<sup>62</sup> Toelupe Vaitoa

<sup>63</sup> Tologata Galuefa

<sup>64</sup> Vaatiuola Lautolo Misi

<sup>65</sup> Misa Tuala Misi

## CHAPTER 4 CONTEMPORARY FORM OF THE *IFOGA*

### 4.1 Influence of Christianity

The arrival of Christian missionaries in the early 1800s saw the rapid spread of Christian ideals and education through the introduction of mission schools, the translation of Scriptures and hymns into the Samoan language, and the training of local pastors.<sup>66</sup>

The missions accepted and utilised the *ifoga*. Indeed its importance became enhanced. As quarrelling and aggressiveness were discouraged, it became all but obligatory for an offended person to accept the abasement of the *ifoga* with its accompanying compensation as a sincere Christian humility, hence sufficient to heal the wound or breach caused by an offence.<sup>67</sup>

In modern day New Zealand, the *ifoga* has been incorporated by Samoans into the practice of their religious beliefs. For example, on the 8th of August 1999 when the Sisters of Mercy in Auckland celebrated their Jubilee Year, the celebration of Eucharist began with the Samoan ceremony of repentance and forgiveness - *an ifoga*.<sup>68</sup>

Central to the *ifoga* is the Christian element of 'forgiveness'. John Williams, a pioneer missionary from the London Missionary Society arrived in Samoa in 1830 and was instrumental in effecting some change to the Samoan culture. The concept of forgiveness was emphatically taught, simultaneous to the widespread conversion of the villagers.<sup>69</sup>

Christianity altered the nature of *ifoga* to some extent. Pre-contact era saw justification in the execution of the offender's *aiga* during an *ifoga* ritual, if their apology was not accepted by the victim's *aiga*. However through Christian teachings, death as a punishment for serious offences was abolished. Essentially the *ifoga* party was at the mercy of their victims. The motto "*Faavae i e Atua Samoa*" or translated as 'Samoa is founded on God', has been upheld by the God-fearing citizens of Samoa over the decades, since the inception of Christianity there.<sup>70</sup>

In many *ifoga* today, a Minister of the Church goes with the *ifoga* party in an attempt to induce the receiving party to accept the *ifoga* peacefully and quickly. The Church has had a major influence in the acceptance of *ifoga*.<sup>71</sup> Today in Christian Samoa, it is extremely rare for an act of *ifoga* to be rejected.<sup>72</sup> The extent and strength of the Christian values of an

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<sup>66</sup> Supra 2

<sup>67</sup> Supra 29 at 218

<sup>68</sup> Nga Whaea Atawhai o Tamaki Makaurau Sisters of Mercy Auckland Proclaim Jubilee News

<sup>69</sup> Supra 18 at 7

<sup>70</sup> Idem

<sup>71</sup> Teo Magele Eteuati

<sup>72</sup> Supra 18 at 7

*aiga* is judged by their acceptance of an *ifoga*.<sup>73</sup> A refusal to accept a traditional apology from the wrongdoers would be considered un-Christian like, unforgiving and in profound, spiritual terms, a repudiation of Jesus Christ's sacrificial act through which he died to forgive the sins of mankind.<sup>74</sup>

#### **4.2 The influence of outside cultures- through settler history and overseas educated Samoans.**

*Aiga* systems in Samoa are becoming fragmented with the tendency towards nuclearization. As more of the skilled and younger members of an *aiga* migrate, the structure of such safety net systems is weakened. These support systems however must be maintained and strengthened through the traditional social institutions in the village, the church and within the family.<sup>75</sup> The *ifoga* as a practice in Samoa is heavily dependent on the maintenance and continued survival of these support networks.

Money and goods which were introduced by the *papalagi* are largely used in *ifoga* today together with the traditional *ie toga*. Goods such as *pusa apa* (boxes of herring), *paelo* (kegs of corned beef) and money are given by the *ifoga* party. Money is also given back to the *ifoga* party by the receiving party.<sup>76</sup> It is suggested by some that this gift of money by the *ifoga* party has a large influence in the acceptance of the *ifoga*.<sup>77</sup>

The *ie toga* is a traditional Samoan treasure. Its origin is debatable. According to Asofou So'o, the *ie toga* is from Tonga. However according to Agafili Laau Tuitolovaa, the literal meaning of *ie toga* is 'to be humble' and it is not something from Tonga. Despite these differing views about the origin of the *ie toga*, there is agreement that the *ie toga* is the most appropriate medium to be used in an *ifoga*. The presentation of *ie toga* is a sign of humility and humbleness. Over the centuries, the *ie toga* has achieved a value in Samoan society that far outweighs their value in commercial sense. They are passed down from generation to generation and are, in effect, heirlooms. The *ie toga* was no doubt originally used as cloth but is presently used only for ceremonial purposes.<sup>78</sup>

Therefore, despite the *papalagi* goods being used in *ifoga* today, the *ie toga* still continues to be the most significant medium used in *ifoga*.

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<sup>73</sup> Lealamisa Lika

<sup>74</sup> Supra 18 at 7

<sup>75</sup> Supra 2

<sup>76</sup> Vaatiuola Lautolo Misi

<sup>77</sup> Agafili Laau Tuitolovaa

<sup>78</sup> Supra 31 at 186-188

### 4.3 Contemporary *Ifoga*

Nowadays in Samoa, *ifoga* are not as timely and drawn out as they once were. Often the actual performance of bowing under *ie toga* is not carried out. For example, an *ifoga* by the village of Malie to the village of Sagone following the assassination of a prominent Minister of Government in 1999, was taken straight indoors from buses on which the village of Malie arrived.<sup>79</sup> It is also said to be very rare for an *ifoga* to be refused or for the *ifoga* party to be still sitting outside when the sun came up.<sup>80</sup> This quick acceptance of *ifoga* has been attributed to the Christian beliefs of the Samoan people.<sup>81</sup>

### 4.4 Impact of the *matai* system

The question as to whether the rank of the *matai* determined the extent of his involvement in the *ifoga* process, attracted varied responses from the *matai* interviewed. On the one hand, there were those who stated that regardless of rank, all *matai* participated in carrying out an *ifoga* even if it was conducted towards *matai* of lower rank. Rank is not engraved, it is a social thing that requires the *matai* to play their part.<sup>82</sup> To stay at the top of the social ladder, a *matai* must be seen to be doing the right thing, and the right thing in this situation is for a *matai* to bow when one of his or her own *aiga* is in the wrong.

However, two *matai*, namely Afioga Teo Magele Eteuati and Agafili Laau Tuitolovaa, stated that it was the *aiga* of the higher *matai* who would carry out the public actions of the *ifoga*. They did however allude to the fact that this would be a delicate situation that involved both the higher *matai* trying to maintain his status in the eyes of others, and at the same time not offending the *aiga* to whom the *ifoga* is being conducted. Offence may be taken if the higher *matai* does not physically bow in apology.

### 4.5 Role of *ifoga* in Samoa's present day legal system

While an *ifoga* has no effect on whether a serious crime is to be prosecuted, the performance of an *ifoga* would affect the sentence should an accused plead or be found guilty. In tiny Samoa where all the Samoan Judges are *matai* with their fingers on the pulse of their villages, it would be naive to expect that a serious crime could be committed without the Judges of the High Court being aware of the performance of an *ifoga*. The Samoan Judges, men of considerable prestige in the islands, are experts in Samoan custom and are well aware of the historical importance of the *ifoga* in the cultural heritage of Samoa. One could make a fair argument that mitigation of sentence as a result is that Samoan customs and the Samoan way of life are strengthened thereby. If an *ifoga* has been performed it demonstrates that the wrongdoer and his family have taken note of the wrong and have taken

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<sup>79</sup> Toelupe Vaitoa & Leaupepetele Faamausili Toelupe speaking about the *ifoga* taken to Sagone, the village of the assassinated Minister Luagalau Levalu Kamu. The *ifoga* was taken by the village of Malie because two of the defendants came from Malie.

<sup>80</sup> Tuala Leuso

<sup>81</sup> Agafili Laau Tuitolovaa & Lealamisa Lika

<sup>82</sup> Asofou So'o

steps to make amends in a manner that comports with the traditions of Samoan society. Remorse has been positively demonstrated.<sup>83</sup>

In the case of a serious crime, it is far more likely that the crime would be reported and prosecuted in a normal fashion. It is brought to the attention of the Attorney General and the presence of an *ifoga* would have no effect on the disposition of the case.<sup>84</sup> The performance of an *ifoga* will however influence the sentence that is handed down during sentencing. It is a factor taken into account in sentencing similar to a guilty plea. A guilty plea means that the accused has admitted guilt. An *ifoga* means that the *aiga* of the accused has admitted guilt. The offender and his or her *aiga* are seen as one.

The logic that follows is that the absence of an *ifoga* is evidence that the offender and his or her *aiga* are not remorseful. However, it is unlikely that an *aiga* would not carry out an *ifoga* if the offender has entered a guilty plea.

It has been said that it is in the court's interest (in Samoa) to hold the *ifoga* in high esteem.<sup>85</sup> It elevates the *ifoga* in the eyes of the Samoan people and helps them to pay more respect to their cultural practices. When the Court is seen to respect cultural practices, the people will have more respect for the judiciary and their function.

#### **4.6 Survival and form of the *ifoga* in Samoa and New Zealand in the 21<sup>st</sup> century**

##### **Samoa**

The *ifoga* in Samoa is increasingly being carried out behind closed doors. This means that the physical bowing of the *ifoga* party outdoors rarely takes place. They are usually taken straight indoors when they arrive. This is due to the strength of people's Christian beliefs as well as the connections between villages. There have been a large number of inter-marriages between villages meaning that the news of an *ifoga* usually arrives to the village of the receiving party before the *ifoga* arrives. The receiving party knows all the details and is therefore prepared for the arrival of the *ifoga* party.<sup>86</sup>

Although this has meant that the *ifoga* party is spared the humiliation of physically bowing, this can be seen to have adverse effects on the continuation of the practice of the *ifoga*. The younger generation may never get to witness an *ifoga* and may only learn about it in classrooms. The writer is one who has never seen an *ifoga* being carried out. The public aspect of the *ifoga* is becoming lost. A custom that is never seen runs the risk of becoming defunct. Without this exposure to *ifoga*, coupled with the large Western influence in Samoa, the younger generation will neither understand nor know all the intricacies of the *ifoga*.

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<sup>83</sup> Supra 31 at 189

<sup>84</sup> Idem 195

<sup>85</sup> Asofou So'o

<sup>86</sup> Agafili Laau Tuitolovaa

## New Zealand

Samoa society is one of the strongest in the world, in terms of cultural solidarity and adherence. It has enabled the Samoans to absorb, rather than to be absorbed into Western institutions.<sup>87</sup> In New Zealand, Samoans are holding fast to their language, to their belief in God, to their cultural practices and to their customs and beliefs

In New Zealand, the Samoan communities that are established have organised themselves around the churches. The Church congregation becomes akin to a Samoan village. They are searching for a community-like structure to feel comfortable in.<sup>88</sup> The difference however lies in the fact that because these church-centered communities are a mixture of people from different villages, there exists a power struggle amongst *matai* of that congregation to assert their own status. This power struggle spills over into ceremonial observances like the *ifoga*. Decisions must be made as to who are the appropriate *matai* to take an *ifoga*, and whether an *ifoga* should be taken at all if the offender is not *aiga* but a church member. Because of proximity, the importance of blood *aiga* and the concept of village (as it exists in Samoa) are predominantly lost in the Samoan communities in New Zealand. This does not mean that the *ifoga* becomes lost as a custom for Samoan people in New Zealand. The dynamics of the *ifoga* as performed in New Zealand are vastly different from that which is performed in Samoa, however the same spirit of genuine apology underlies it.

Samoaans are a very public-oriented people.<sup>89</sup> In this respect, it may be true that outsiders might consider them noisy or loud.<sup>90</sup> In Samoa, when an *ifoga* is carried out, it is seen and heard by the whole village and sometimes the whole district. This public aspect is believed to contribute somewhat to uplifting the spirit of the receiving party. The fact that another *aiga* or village has bowed to the receiving party is not a trivial matter. Performance is publicised by being presented in front of many people rather than in front of a few, the theory being that in such a setting more people are likely to remember it.<sup>91</sup> This public aspect of the *ifoga* that plays a big part in Samoa is believed to also be present in New Zealand. However the public nature of the *ifoga* in New Zealand differs. The receiving party in New Zealand will mainly live in a suburb surrounded by neighbours who may not necessarily be Samoans. The public nature of the *ifoga* in this situation is found in the fact that Samoans will talk about it and the tale will spread by word of mouth.<sup>92</sup>

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<sup>87</sup> Understanding Polynesians (Wellington: Polynesian Advisory Committee of the Vocational Training Council, 1985) 7

<sup>88</sup> Leapepetele Faamausili Toelupe

<sup>89</sup> Asofou So'o

<sup>90</sup> Supra 42

<sup>91</sup> Idem

<sup>92</sup> Asofou So'o

## CHAPTER 5 THEORETICAL BASIS

### 5.1 Individual Rights versus collective responsibility

In Samoa, individual rights are subordinate to the rights of the *aiga* as a whole. There exists a conflict of cultural rights presented by the collective decision of a village, against the rights of the individual and that of the law administered by the central government.<sup>93</sup> In regards to the *ifoga*, it is a display of collective responsibility by an *aiga* or village that stems from culture. The Court system in Samoa that is largely premised on individual rights, takes note of this custom and pays it due regard. Therefore there is no conflict in this area as Samoans largely understand that “*e le taofia e le aganuu le tulafono*”.<sup>94</sup> (customs do not stop the law from operating).

In Samoa, the customs and usages of the people have despite the influence of various European and other nations over the years been preserved virtually unchanged.<sup>95</sup> Part II of the Samoan constitution contains fundamental rights’ provisions similar to those seen in many Western countries. Fundamental rights are founded on the philosophy of individual liberty while communal rights and obligations are based on the philosophy of collectivism as administered by the village *fono*. The two underlying philosophies and the systems of rules derived there from are seen to be in competition with each other and, as the Constitution has expressly incorporated the philosophy of individual liberty in its fundamental rights provisions, the philosophy of collectivism as manifested through the customs and usages administered by the *fono* has to give way where conflict occurs. It is considered that this will gradually but eventually destroy the authority of customary adjudicators.<sup>96</sup>

The *ifoga* is a custom whereby the collective rights of the *aiga* outweigh and dominate any individual rights. The offender has no say in whether an *ifoga* is carried out for his or her wrongdoing, nor has the victim (if living) have any say in whether the *ifoga* is accepted or not.<sup>97</sup> If the village or district conducts the *ifoga*, they will return from the *ifoga* and penalize the *aiga* of the offender, not just the offender themselves. They do this by fining the *aiga* in terms of foodstuff. The fines are hefty because the purpose is to ‘*faamativa*’ (make poor) the *aiga* of the offender.<sup>98</sup> They may demand all taro crops from the plantation including roots so that there is no more taro left growing in that particular plantation. They may demand all the sows so that the *aiga* cannot breed any more pigs. The *aiga* of the offender will abide by these fines because of their sense of collective responsibility that has meant that they regard themselves as part of the offender and not separate from him or her.

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<sup>93</sup> Supra 4 at 58

<sup>94</sup> Lealamisa Lika

<sup>95</sup> Supra 5

<sup>96</sup> Supra 3 at 61

<sup>97</sup> Teo Magele Eteuati

<sup>98</sup> Agafili Laau Tuitolovaa

In terms of the victims, the strength of the culture and the feeling of community mean that the victims take the actions of their *aiga* as their own. Their hurt has been resolved by their acceptance by their *aiga* of an *ifoga*, and it is very rare for victims to take matters into their own hands by retaliating. If they do something different from what has been decided by the *aiga*, they will be viewed as putting their *aiga* down in the eyes of others because it will show that the decision of their *matai* is not respected.<sup>99</sup>

The performance of an *ifoga* reinforces the social nature of Samoan community. It is a custom which is used to preserve social relationships or *va*, as well as one which takes the focus away from individuals. Hibbitts writes:<sup>100</sup>

In the long term, the social aspect of performance creates a cultural atmosphere in which sociable behaviour is greatly prized. The more sociable people are, the more they are to communicate, and the more likely it is their cultural corpus will be preserved. Individuals in performance-based societies become so accustomed to and depend upon contact with one another that they tend to conceive of the very idea of “self” in social terms, identifying themselves primarily by their social relationships and the opinion that others have of them. This encourages the development of outwardly oriented “shame cultures” as opposed to inwardly oriented “guilt” cultures.

Samoan society is a shame culture. Samoans wear their shame on their sleeves for all to see when they carry out an *ifoga*. This shame is offered publicly to the receiving party to erase.

## 5.2 Restorative Justice

A commonly accepted definition of Restorative Justice is that it is a process whereby parties with a stake in a specific offence, collectively resolve how to deal with the aftermath of the offence and its implications for the future.<sup>101</sup>

Restorative Justice is not a new theory. Various forms of Restorative Justice have been practiced by different cultures throughout time.<sup>102</sup> The Samoan culture is one such culture. However the label of Restorative Justice is not one that is used in Samoa. It appears that what has been given the name Restorative Justice in New Zealand and other common law countries, has long been a part of Samoan social structure. The *ifoga* appears to fit within the realm of what is known as Restorative Justice. To fully understand how the *ifoga* fits within this practice, the next section will explore this idea of Restorative Justice.

Restorative Justice is a philosophy that embraces a wide range of human emotions including healing, mediation, compassion, forgiveness, mercy, and reconciliation as well as sanction

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<sup>99</sup> Asofou So’o

<sup>100</sup> Supra 42

<sup>101</sup> New Zealand Restorative Justice Practice Manual: Restorative Justice Trust 2000 p18

<sup>102</sup> Idem at 20

when appropriate.<sup>103</sup> The *ifoga* encompasses all these emotions. Restorative Justice also recognises a worldview which says we are all interconnected and what we do (be it good or evil) impacts on others.<sup>104</sup> Samoan society is a complex weave of interconnections that prevents actions of an individual to be separated from their *aiga*, village or district. Every action by a Samoan individual will impact on the reputation and good name of his or her *aiga*. Restorative Justice offers the process whereby those affected by criminal behaviour (be they victims, offenders, the families involved or the wider community) all need to have a part in resolving the issues which flow from offending. This provides a recognition to a degree at least, that all things are interconnected.<sup>105</sup>

Restorative Justice does not focus on vengeance and punishment but seeks to heal both the community and the individuals involved. The goal of Restorative Justice is to heal the wounds of every person affected by an offence.<sup>106</sup> Because Samoan society is collectivist, it is believed that when the *aiga* is healed by an *ifoga* being brought to them and their acceptance of it, the individuals involved are also healed. They are not separated from the *aiga*. For the individual victim, their sense of being wronged by another becomes the feeling of the whole *aiga*. Similarly, the offender's sense of shame becomes the shame of his or her *aiga*.

For the offender to be involved in any useful way, he or she must acknowledge responsibility for the crime committed and express honest regret.<sup>107</sup> In the context of the *ifoga*, honest regret and genuine remorse is a matter between the offender and his or her *aiga*. Once the *ifoga* takes place, the *aiga* is expressing honest regret and genuine remorse. All those involved get a chance to put a human face on the crime. They get a chance to begin a process of healing. They become empowered again. The offenders get to take responsibility for their criminal behaviour. Each of these processes provides an added dividend for family life and the wider community. There will be less alienation, stronger bonding among family members, and a greater degree of personal and social empowerment. In New Zealand, Restorative Justice takes the form of community group conferences. Restorative Justice in Samoa takes the form of the *ifoga*.

This modern system of Restorative Justice reflects a philosophy practiced by indigenous peoples for thousands of years. Jim Consedine suggests that the philosophy of these traditional systems should be recovered to underpin appropriate modern processes.<sup>108</sup> This

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<sup>103</sup> Consedine, J Third Millenium - Restorative Justice or More Crime and Prisons? in Ngai Tatou 2020-Indigenous Peoples and Justice: Tangata Whenua I te Tika June 1999 The Foundation for Indigenous Research in Society & Technology p61

<sup>104</sup> Idem

<sup>105</sup> Idem

<sup>106</sup> Idem

<sup>107</sup> Idem

<sup>108</sup> Supra 103

work is an attempt to discover how the philosophy of the *ifoga* can underpin appropriate modern processes.

The central philosophy of Restorative Justice has three fundamental propositions:

- Crime injures individuals and the community.
- The criminal justice system should help repair those injuries.
- The state monopoly over society's response to crime needs revisiting with involvement of victims, offenders and their communities as early and fully as possible.<sup>109</sup>

The Restorative Justice system can be the basis for ensuring that authority is given to people within their communities to take responsibility for all their own members including victims, offenders and families. It can allow for meaningful input from the people themselves and for responsibility to be restored to the social group.<sup>110</sup> The *ifoga* has been meeting and continues to meet these aims as spelt out by Bowen. The authority has always rested with the *matai* of an *aiga* to take responsibility for members of his or her own *aiga*.

Professor John Braithwaite speaks of an important theoretical strand that is the idea of 'reintegrative shame'. The notion here is the claim that societies with lower crime rates are the societies which shame more effectively and shame in a particular way which is reintegrative. The basic deal here is that there are two ways of thinking about how you transact shaming, reintegrative or stigmatizing shaming. Reintegrative shaming is shaming within a continuum of respect. This very much connects with Howard Zehr's idea of respect begetting respect, and disrespect begetting disrespect. Disrespectful shaming is likely to make our crime problems worse because of all the work we have from criminology on how stigmatization can deliver young people, and adults as well, into the hands of criminal subcultures, where people who have a status problem, through powerlessness and rejection from the wider society, can solve that status problem through identification with a criminal subculture. The core idea is that we need to distinguish between reintegrative shaming, which is shaming within a continuum of respect and disintegrative shaming, or stigmatization which is disrespectful shaming and shaming that is about casting out. Shaming that is not only focusing on the wrong of the act, but on the person as an evil person, whereas reintegrative shaming is about disapproving of the criminal act within a continuum of approving of the person as a good and respected person.<sup>111</sup>

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<sup>109</sup> Bowen, H & Considine, J (eds) Restorative Justice: Contemporary Themes and Practice. 1999 Ploughshares Publications Lyttelton p16

<sup>110</sup> Bowen, H Restorative Justice and the Court of Appeal's Consideration in the Clotworthy Case in Ngai Tatou 2020- Indigenous Peoples and Justice: Tangata Whenua I Roto I te Tika June 1999 The Foundation for Indigenous Research in Society & Technology p97

<sup>111</sup> Braithwaite, Professor John 'Restorative Justice' in Re-thinking Criminal Justice Vol 1 Justice in the Community Justice FWM McElrea (ed) Legal Research Foundation Auckland in association with the Institute of Criminology Victoria University Wellington p15

This concept of reintergrative shaming is a very interesting one that is highly relevant to this analysis of the *ifoga*. The fact that the whole *aiga* or village of the offender carries out an *ifoga* is proof that while the whole *aiga* or village is ashamed of the offender's actions, they still embrace him as one of their own. The offender is often shielded by his or her *aiga*. If the offender does not go with the *ifoga* party, it is his or her *aiga* or village who will face the *aiga* of the victim, and who have to swallow any harsh words that are thrown at them.

The New Zealand Restorative Justice Practice Manual identifies the need for Restorative Justice practices in the face of the current legal system failing to work in today's society. This is due mainly to its focus on retributive justice resulting in too many criminals and too many prisons. This Practice Manual is a blueprint for Restorative Justice practice that will hopefully increase in New Zealand. The Practice Manual states that:

The world desperately needs a criminal justice system that does not just focus on punishment. We need one that gives a better deal to victims, that promotes apology, healing, understanding, accountability, personal and collective responsibility, forgiveness and where possible reconciliation. We need to re-learn how to practice compassion and mercy in our dealings with one another. We need a system that reduces imprisonment and only uses it as a final resort when everything else has been tried.<sup>112</sup>

In its broadest sense Restorative Justice is concerned with restoring social relationships while establishing or re-establishing social equity in relationships in which each person's rights to equal dignity, concern and respect are satisfied.<sup>113</sup>

A few of the similarities between the *ifoga* and the aims of Restorative Justice practices are listed below.<sup>114</sup>

-Both build on the strengths of community; the *ifoga* epitomizes the strength of community in Samoa. Carrying out an *ifoga* is evidence of this strength, and this strength increases as community solidarity is reinforced when an *ifoga* has been completed.

-Both emphasise the need to repair past harms in order to prepare for the future; the aim of the *ifoga* is to repair any breach in the *va* between people, *aiga*, villages or districts so that the incident is not mentioned again by future generations and does not cause a rift.

-Both seek to reconcile offenders with those they have harmed; the *aiga* of the offender (who are viewed as the offender) come face to face with the *aiga* of the victim. The *ifoga* is a reconciliatory mechanism between the *aiga*.

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<sup>112</sup> Supra 100 at 14

<sup>113</sup> Idem 17

<sup>114</sup> Van Ness p42 in Bowen (Supra 110)

-Both help communities learn to reintegrate victims and offenders. After an *ifoga*, the offender is at no risk of being cast out by the community. The victim too has a sense of justice that the wrong against them has been acknowledged publicly.

Restorative Justice is said to "...provide a non-violent but challenging and positive way of proceeding".<sup>115</sup> The *ifoga* once had the potential to be violent in the sense that the victim's *aiga* could have responded by beating the *ifoga* party. Nowadays it is very rare for an *ifoga* to be met with violence. It is customary that the other party would accept the gesture and agree to a peaceful settlement.

Where restorative processes form an unbroken tradition of society such as in Samoa, they may exist independent of the formal criminal justice system and provide a culturally-oriented alternative to deal with disputes, other than those legislated as offences.<sup>116</sup> Restorative Justice became a theme in Western systems of criminal justice only relatively recently.<sup>117</sup> In a modern urbanized society the idea of community may be more romantic than pragmatic. Urbanization, mobility and the increased size and complexity of society have influenced the development of communities whether based in hapu or village traditions.<sup>118</sup> Samoa is no exception to this trend. The 21<sup>st</sup> century poses many varied and new challenges to the continued existence of the *ifoga*.

The push for Restorative Justice is the spearhead for creating a truly effective justice system. Restorative Justice responds to the failure of the present system to meet the needs of victims and keep our communities safe. Restorative Justice turns that failure on its head, placing victims at the centre of the process. A principal objective is to enable victims to participate in the justice system. They get to confront the offender and seek recognition and reparation for the harm they have suffered. They also contribute to a process to increase the chances of changing the offending behaviour, which may also help them recover from the impact of the offence on their lives. The second objective of the scheme is to help the sentencing judge. The judge gets a clearer idea of the harm caused to victims and what might help with the future integration of the offender. Restorative Justice is based on the view that confronting offenders with the real pain and trauma caused by their actions and holding them accountable to the victim in making amends can be a significant catalyst for change in behaviour.<sup>119</sup> Although the *ifoga* does not focus on individuals, it does provide for the victim (seen as the his or her *aiga*) to confront the offender (the offender's *aiga*). It also contributes to changing the offending behaviour by placing *aiga* pressure on the offender.

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<sup>115</sup> Consedine, Jim Restorative Justice: A Movement of Hope in Restore Newsletter of the Restorative Justice Network March 2001 Issue No 17 p2

<sup>116</sup> Chapter 2: Defining Restorative Justice in 2.1 General Definitions <http://justice.govet.nz/pubs/reports/1996/restorativejustice/chapter2/html>

<sup>117</sup> Idem

<sup>118</sup> Idem

<sup>119</sup> Scoop Parliament [spectator.co.nz] Communications Management Shifting the Debate- Matt Robson Speech Monday 6 November 2000, 10.38 am

One of the strengths of Restorative Justice is how closely it matches our natural instincts for justice. Samoan families in New Zealand continue the tradition of *ifoga*. Pacific communities know how successful group-centered justice can be: Pacific Island inmates already have a lower rate of re-offending than any other group measured.<sup>120</sup>

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<sup>120</sup> Idem

## CHAPTER 6 IMPLEMENTATION INTO THE CRIMINAL JUSTICE SYSTEM IN NEW ZEALAND

Obviously a concept such as *ifoga* that works in one culture cannot be practically adopted by a foreign culture. One can immediately see that what is effective in the insular, relatively homogenous and immobile Samoan culture might be totally ineffective elsewhere.<sup>121</sup> This obstacle must be weighed against the point made by Helen Bowen that the right of indigenous people to participate in the criminal justice system according to their customary practices requires acceptance that justice can be served from more than one perspective. Restorative Justice provides one alternative.<sup>122</sup>

This chapter will deal with the how the *ifoga* may be introduced into the criminal justice system of New Zealand in a way that will result in a view that cultural practices can and do contribute significantly to a more effective and equitable legal system.

### **6.1 The Criminal Justice System in New Zealand**

In New Zealand, s.16 of the Criminal Justice Act 1985 allows ethnic or cultural matters relating to the offence or to avoid re-offending to be put before the court.<sup>123</sup> Section 16(2) states that:

*(2) The matters to which a person may be called to speak...are, broadly, the ethnic or cultural background of the offender, the way in which that background may relate to the commission of the offence, and the positive effects that background may have in helping to avoid further offending.*

This appears to be the only avenue at present by which cultural practices and customs can be given recognition. The *ifoga* is a prime example of how background may help to avoid further offending. However, the use of this section relies entirely on Court lawyers who may wield sufficient knowledge of the law but may not necessarily understand the importance of the *ifoga*. If there is a lack of understanding, their ability to persuade the court is significantly diminished.

According to Matt Robson, Minister for Courts, the present system in New Zealand has failed to respond to victims and failed to make our communities safe. Our re-conviction rates are far too high-some of the highest in the world. Up to 80% of prison inmates re-offend within 24 months. For more than nine years, sentences have increased for more and more offences. Since 1990 violent crime is up by 90%. The Crimes Amendment Act 1993 increased the maximum penalty for rape and unlawful sexual connection from 14 years to 20

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<sup>121</sup> Supra 31 at 184

<sup>122</sup> Supra 109 at 91

<sup>123</sup> Supra 109 at 93

years, yet conviction for violent sex offences including rape tripled in number between 1988 and 1996. So the present system is a dismal failure. The biggest failure is that it has created too many victims.<sup>124</sup>

The *ifoga* has a place within the community to reduce re-conviction rates amongst Samoans because it emphasises the concept of communal shame. Currently it is not recognised for its potential to reduce the crime rate and it has a non-existent place in the criminal justice system currently in place in New Zealand.

## 6.2 Practical Implementation

The starting place of the *ifoga* in the criminal justice system of New Zealand is in sentencing. It should be well understood by defence lawyers and used in their pleas in mitigation and pushed as one of the more significant mitigating factors in sentencing. In Samoa, the presence of an *ifoga* is a mitigating factor in sentencing for all types of offences, ranging from assault to murder.

Acceptance of the *ifoga* as a viable cultural practice of Samoans in New Zealand will only come about with the support of those in authority, like the courts and the Police. If the performance of one becomes a regular factor in mitigation of sentence, then the support from the authorities must be seen and not just heard. For example, the Police can assist in *ifoga* by being present at an *ifoga*. Their role will not be to supervise the *ifoga* but rather should be more of a supportive role. If Samoans feel that they can approach the police and be given support, then their involvement will be welcomed and appreciated. Furthermore, the involvement of the Police can be viewed as a procedure built into the system to ensure that an *ifoga* did take place. Another procedure that could be built into the system is for a member of the receiving party to give evidence that they received an *ifoga*.<sup>125</sup>

If the *ifoga* is given this recognition, then the burden for public education must fall on the state. As with other restorative practices, the appropriate role of the state is to articulate the vision, disseminate information and provide support and technical assistance for development of those practices.<sup>126</sup> Before any move is made by the authorities in New Zealand to recognise the *ifoga*, they must work closely with the Justice Department in Samoa in order to gain a better understanding of the practice.<sup>127</sup>

In terms of the *ifoga*, it must be understood by those who administer justice in this country, that it is a practice that is not performed lightly by Samoans. It is the greatest loss of face that a Samoan can suffer. Samoans will not bow merely for the sake of the court as an *ifoga*

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<sup>124</sup> Supra 118

<sup>125</sup> Asofou So'o

<sup>126</sup> Supra 109 at 96

<sup>127</sup> Asofou So'o

will mark the family name for generations to come.<sup>128</sup> Therefore any abuse of process that may be suggested is highly unlikely.

In Mauri Pacific's Justice Policy Statement 19 October 1999, it was stated that: (Indigenous Peoples and the Law)

The practice of ifoga in Pacific Island culture will be recognised by our justice system under Mauri Pacific. It will be an option for the offender only if the victim and their whanau agree and only for offences with penalties of less than two years. Said to be comparable to marae justice where a point of reconciliation is found to restore the mana of the victim and their whanau.

The policy proposes for the legal system to formally recognise the Pacific Island practice of *ifoga*, as a means of achieving justice for victims and their families in a culturally appropriate way.<sup>129</sup> This policy recognises that the *ifoga* is a means by which one community can keep its re-offending rates to a minimum. This is a way that the *ifoga* can be used to keep offenders out of the current legal system which is already starting to buckle under the weight of its criminals.

The discussion up to this point has assumed that both the victim and the offender have been Samoans. The situation gets complicated when the victim is of another culture. In these situations, the most appropriate thing to do will be for the victims and their families to agree to an *ifoga* before one is brought before them. The role of the authorities will be to convey the intentions of the *ifoga* party to the victim and explain to them the importance of an *ifoga* for the offender and his or her *aiga*. An *ifoga* should only be carried out in these situations if the victim and his or her family agree to it. This is suitable for minor offences with penalties of less than two years as suggested by Mauri Pacific. It will mean that for those minor offences, we are not just focusing on punishing the offenders, but on healing the victims and rehabilitating the offenders as well.

If the victim is Samoan and the offender is non-Samoan, the situation again is complicated. It may be inappropriate to offer the option of an *ifoga* to the non-Samoan offender, who may or may not have the support of his/her family. The offender, in not understanding the significance of *ifoga* may end up making a mockery of the process by performing it without understanding it. Another Restorative Justice practice may be needed to address this situation.

### 6.3 A Novel Approach in Hawaii

Hawaii has quite a novel approach to dispute resolution that comes in the form of the Manoa Conflict Resolution Center. It is a centre where people can choose from a variety of conflict

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<sup>128</sup> Idem

<sup>129</sup> Scoop Parliament [spectator.co.nz] Communications Management- Mauri Pacific's Justice Police Tuesday 12 October 1999, 11.22 am

resolution styles and the centre provides the expertise. Amongst the available styles is the *ifoga*. It is a centre that claims to be the first multiple perspective conflict resolution centre in the world. Experts are trained in the different styles of conflict resolution.<sup>130</sup>

However, in relation to this quite novel concept, the writer would argue that this sort of approach takes away from the spirit of the *ifoga* as practiced by Samoans. The *ifoga* and its basic premise cannot be imposed by outside forces. It must come from the people. An *ifoga* is carried out because of the feeling of genuine remorse that is felt by the *aiga* or the village for the actions of one of its own. If it is practiced for any other reason, it will merely be a collection of empty gestures.

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<sup>130</sup> Uncommon Alliances in Sovereign Hawaii's <http://soc.hawaii.edu/future>

## CHAPTER 7 CONCLUSION

Each tentative conclusion that the writer set out in the beginning of this paper will now be reassessed and where necessary modified.

### **Tentative Conclusion 1)**

The *ifoga* is so Samoan and unique in its operation and rationale that any attempt to implement it into a legal system that is shrouded by another culture is bound to be problematic. It is born of a system that has a complex weave of connections between *matai*, *aiga* and village. Its value is found in the maintenance of these connections. Such connections are found in New Zealand only to a small extent amongst Samoans.

The reason that these *aiga* and village connections are found in New Zealand only to a small extent is because Samoans have now predominantly rallied around Churches. However, these Samoans have formed new communities that have allowed them to continue to practice *ifoga*. Therefore, this continuation of the practice warrants some degree of recognition from the legal system that these Samoans are now subject to.

### **Tentative Conclusion 2)**

Recognition of the *ifoga* (as practiced by Samoans) in the criminal justice system of New Zealand is long overdue. By recognition I mean for the practice to be taken into account in sentencing in the same way in which it is recognised by the courts in Samoa.

Although there is wide discretion for court lawyers to bring in any factors in their pleas in mitigation, they will not consider the *ifoga* important for their Samoan clients unless they understand its significance. The starting point is to educate lawyers who specialize in criminal defence work about the *ifoga* and s.16 of the Criminal Justice Act 1985 which is very rarely utilised. The concept of the *ifoga* should also be introduced to the judiciary, so that they will be aware of its existence and can ask the relevant questions when a Samoan offender appears before them. This is a way in which the *ifoga* can be brought into the existing criminal justice system with its focus on retributive justice. The *ifoga* can also be used to keep offenders out of the legal system in the way that is advocated by the political party Mauri Pacific. It can be an option for the offender only if the victim and their family agree and only for offences with penalties of less than two years. This will mean that some offenders may be kept out of the overcrowded prisons, but at the same time the victim and their family will feel that justice has been done. This is where the *ifoga* falls squarely within the practice of Restorative Justice, and supports the New Zealand Restorative Justice Practice Manual by promoting apology, healing, understanding, accountability, personal and collective responsibility, forgiveness and sometimes reconciliation.

### **Tentative Conclusion 3)**

It is possible for the *ifoga*, or a practice similar to it, to be available to other New Zealanders as a method of dispute healing. I deliberately choose not to use the word 'resolution' because it may be unrealistic to expect other cultures to adopt the *ifoga* and understand its significance in resolving disputes. I use the word 'healing' because it connotes a gradual process. The *ifoga* may be considered as one step towards the healing of a dispute. The form that the *ifoga* will take will have to be significantly different from its current form in order to preserve its integrity and cultural importance for Samoan people. A uniquely 'kiwi' interpretation of the *ifoga* needs to be adopted and this interpretation must be decided by the parties involved. However, this form must be prevented from taking on orthodox procedures so that it loses its flexibility.

After careful consideration of the *ifoga* and its underlying principles, the author is of the opinion that the *ifoga* should not be used by other cultures as a method of dispute resolution or healing. The reason as mentioned before is that the *ifoga* relies on the *va* or the connection between Samoans which is unique to them. This connection is found in the *faamatai* system found only in Samoan society. Therefore the author is of the opinion that tentative conclusion 3 is not a viable option.

### **Tentative Conclusion 4)**

The place of the *ifoga*, or a practice similar to it, as a viable method of dispute healing will only come about with education and awareness. This responsibility lies with those who work within the Justice system.

Their responsibility is to educate themselves about this cultural practice, and then to educate the rest of the non-Samoan community in New Zealand about the importance of this practice for Samoans.

Many of my conclusions have been ambitious. However the *ifoga* is a custom that must not be implemented in a way that may compromise its integrity and credibility for the Samoan people. Due caution is needed as Samoans do not view their customs and traditions lightly

## GLOSSARY OF SAMOAN TERMS

*Aiga*-elementary family or extended family. The term as used in this paper refers to extended family

*Ali'i*-chief, lord, man of noble birth

*Faaaloalo*-respect

*Faamativa*-to make poor

*Faamatai*-the system of matai

*Faasamoa*-The Samoan way of life. See 2.2

*Faipule*-Elected heads of villages

*Fale*-House built with sennit (ie. Samoan house as opposed to one of European style)

Fono-meeting or council

*ie toga*-finely woven mats from the leaf of the pandanus tree

*Ifoga*-Samoan apology. See Chapter 3.

*Le Atua*-God

*Matai*-titled head of a Samoan extended family (formally elected and honoured as such)

*Paelo*-kegs of corned beef

*Papalagi*-Anglo-Saxon people

*Pasese*-monetary gift given as a contribution towards a person or party's fare to get home.

*Pusa apa*-cartons containing tins of herrings

*Tautua*-rendering of services to a matai

*Tulafale*-orator or talking chief

*Umu*-Stone oven consisting of a shallow cavity lined with stones on which a fire is lit and cleared away before the food is laid on the hot stones.

*Va/vatapuia/va fealoaloai*-relationship, relations or connections between persons or things

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3. Tuala Leuso, 75 years from Safaatoa Lefaga
4. Teo Magele Eteuati, 66 years from Vaiee Safata
5. Tologata Galuefa, 67 years from Pata Falelatai
6. Vaatiuola Lautolo Misi, 56 years from Mulifanua
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## **APPENDIX A:** INTERVIEW QUESTIONNAIRE

For this interview to be successful in terms of acquiring the information needed, I feel that it must be conducted in the Samoan language. The people to be interviewed are elders in the community, both the Samoan community in Auckland and in particular those in Samoa. The proposed layout of this proposed interview questionnaire is as follows. The Samoan phrasing of the questions has been checked for accuracy and the questions do comply with protocol when talking to a Samoan elder. This protocol is the '*faaloalo*' or respect.

In terms of ethical considerations and what is politically correct in conducting interviews, this is an area that is new to me so I may need some assistance with this. My feeling on this is because I am required to have the interviewees sign a consent form, I will do this at the conclusion of the talk because I believe that it will create suspicion and skepticism in the interviewees who have a limited understanding of English. However I will alert them to the purpose of my interview and what I intend to ultimately do with the information at the outset.

**malo le Soifua. O lou igoa o Leilani Tuala. E muamua lava ona ou faafetai atu mo le avanoa ua e tuu mai ta te talanoa ai. O le uiga ua ala ai ona ou sau ona ua ou fia maua se fesoasoani mai ia te oe e uiga i ifoga faasamoa. Ou te fia malamalama i itu uma o mea tau ifoga. E te malie ae ou fesiligia oe i lenei mataupu?**

(Hello, my name is Leilani Tuala. Firstly I would like to thank you for the opportunity that you have allowed for us to talk. The reason that I have come is to seek your assistance and knowledge about the Samoan ifoga. I would like to understand about this practice of the ifoga. Would you mind if I now asked you some questions in relation to ifoga?)

**Igoa (Name)**

**Tausaga (Age)**

**Nuu (Village)**

**Sa iai se taimi sa e auai i se ifoga? (Have you ever been involved in an ifoga?)**

**E fia taimi sa e auai ai I ifoga? (How many times have you been involved in ifoga?)**

**E mafai ona e faamatala mai ifoga sa e auai? (Can you tell me about those times?)**

**Aisea sa fai ai le ifoga?(What was the reason for the ifoga?)**

**O lea se mafuaaga sa ala ai ona fai le ifoga? (Why was it necessary to conduct an ifoga?)**

**Oa ni itu taua na ala ai ona manatu e fai le ifoga? (Why was it important or imperative to conduct an ifoga?)**

**O ai sa fai iai le ifoga? (Who was the ifoga conducted towards?)**

**O ai uma sa auai I le ifoga? (Who was involved in the ifoga?)**

**E alu le sa agasala i le ifoga? (Does the offender go with the ifoga party?)**

**O ai sa faia le filifiliga e tatau ona fai le ifoga? (Who made the decision to conduct an ifoga?)**

**Sa talia le ifoga?(Was the ifoga accepted?)**

**I lou malamalama, aisea e fai ai e tagata Samoa nei mea o ifoga? (In your opinion, why do Samoans conduct ifoga?)**

**E I ai se auala sao e fai ai ifoga? (Is there a right way of conducting an ifoga?)**

**E fia ni faiga eseese e mafia ai ona faatino se ifoga? (How many different ways can you conduct an ifoga?)**

**E mafia ona e faamatala mai? (Can you describe the different ways?)**

**E te iloa pe aisea na amata ai nei mea tau ifoga faasamoa? (Do you know anything about the origins of this practice?)**

**E faafelea ona iloa pe ua talia poo ua le talia se ifoga? (How do know if an ifoga is accepted or rejected?)**

**Afai e talia le ifoga, o le a le mea e tupu I le sa agasala? (Once an ifoga is accepted, what happens to the offender?)**

**Ae faapefea le na aafia I le faalavelave? (How about the victim?)**

**O lea le mea e tupu pea le talia se ifoga? (What happens if an ifoga is rejected?)**

**O lea sou finagalo e iai se aoga o le ifoga? (What is your opinion about the usefulness of the ifoga?)**

**Ua e maitauina ua iai ni suiga o ifoga mai aso ao e laitiiti? (Have you noticed any changes in ifoga over time?)**

**E tutusa le ifoga muamua sa e auai ma le ifoga mulimuli sa e auai? (Is there any difference between the first ifoga that you were involved in and the last one?)**

**Afai e eseese e mafai ona e faamatala mai ia eseesea? (If yes, what are those changes?)**

**O lea sou lagona o lea le mea ua ala ai ona iai lenei suiga? (Why do you think there has been this change?)**

**E talafeagai aoaoga faakerisiano ma ifoga? (Can you reconcile Christian beliefs and ifoga?)**

**E mafai ona e saunoa I ia eseese? (How?)**

**O iai ni auala faapapalagi ua tatou faaogaina I ifoga? (Have Samoans adopted any pakeha ways into the ifoga?)**

**Afai e iai, oa ia auala? (What are they?)**

**Afai ae faaoolima se atalii ose alii taua ose nuu, ise tasi ose aiga e maualalo lo latou matai ile nuu, pe talafeagai ona alu se ifoga? (If someone from a high chief's family offends against someone from a lower ranking family, will an ifoga be conducted?)**

**APPENDIX B:**  
**CONSENT AGREEMENT**

**MALIEGA E FAAOGA FAAMATALAGA**

O au \_\_\_\_\_, mai le nuu o \_\_\_\_\_ malie i le faaogaina e Leilani Tuala-Warren o au faamatalaga i le ma talanoaga. E mafai ona faaoga e ia nei faamatalaga is se pepa o le a tusia e ia e uiga i ifoga faasamoa.

Ua uma ona faamatala mai e Leilani Tuala-Warren ia te au lenei maliega ma ou te malamalama lelei lava i lenei maliega.

Sainia e \_\_\_\_\_

Aso \_\_\_\_\_

**CONSENT AGREEMENT**

I, \_\_\_\_\_, of \_\_\_\_\_ consent to the use of any information which I supply to the interviewer, to be used by Leilani Tuala-Warren in a research paper to be written by her.

This consent agreement has been explained to me by Leilani Tuala-Warren in words and language which I fully understand.

Signed \_\_\_\_\_

Date \_\_\_\_\_