

**Joint Submission of the Samoa UN Country Team for the 3<sup>rd</sup> Universal  
Period Review of Samoa**

**March 2021**

**- Prepared by the Resident Coordinator Office of Samoa –**



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## **Institutional human rights framework in Samoa**

### ***i. Treaty ratification, reporting and cooperation with UN human rights mechanisms***

1. Since the last review, Samoa ratified the Convention on the Rights of Persons with Disabilities (CRPD) (December 2016) and the Convention Against Torture (CAT) (March 2019). Samoa also ratified the three Optional Protocols to the Convention of the Rights of the Child (CRC) – the Optional Protocol on the Sale of Children, Child Prostitution and Child Pornography; Optional Protocol on the Involvement of Children in Armed Conflict; and the Optional Protocol on Communications Procedure April and May 2016).<sup>1</sup>
2. In 2016, the Government of Samoa established the National Mechanism for Reporting and Follow-up (NMRF). It is co-chaired by the Ministry of Foreign Affairs and Trade (MFAT) and the Ministry of Women, Community and Social Development (MWCSO). In November 2017, with the support of the OHCHR Pacific and the Resident Coordinator Office, Samoa introduced SADATA (Samoa data) to track its human rights implementation.
3. To date, Samoa's compliance with its ratified international human rights (IHR) treaties was only reviewed by two treaty bodies: the CRC (2016) and the Convention on the Elimination of all Forms of Discrimination Against Women (CEDAW) (2018). Samoa has yet to submit its initial report to four treaty bodies: Human Rights Committee (due 2009), CED (due 2014), CRPD (due 2019), and CAT (due 2020).

#### *Recommendations*

- *Ratify the remaining core IHR treaties, namely, the International Convention on the Elimination of All Forms of Racial Discrimination (ICERD); the International Covenant on Economic, Social and Cultural Rights (ICESCR); and the International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families (ICRMW);*
- *Strengthen the NMRF;*
- *Ratify the Optional Protocol to CEDAW;*
- *Ratify the ILO Protocol to the Forced Labour Convention, the remaining three Governance Conventions and the applicable Technical Conventions;*
- *Seek technical support from OHCHR Pacific as necessary to clear its overdue reports.*

### ***ii. Constitutional and legislative framework***

4. The Constitution of the Independent State of Samoa (1960) is based on the Westminster model of parliamentary democracy and is adapted to Samoan customs.

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<sup>1</sup> Samoa is the first Pacific nation to accede to all three Optional Protocols of the CRC.

5. The Constitutional Amendment Act 2017 transformed the country from secular to a Christian state while recognizing the freedom of thought, conscience and religion as enshrined in Article 11 of the Constitution. Given the predominance of men in Christian church and village leadership, it is crucial to ensure a balance between Christianity and women's rights.
6. On 15 December 2020, the Parliament of Samoa passed the Constitution Amendment Act, the Land and Titles Act, and the Judicature Act. The three Acts introduced significant revisions to the Constitution and judicial practices in Samoa and have been the subject of considerable public comment, debate and criticism.<sup>2 3</sup>
7. Prior to the passing of the Acts, the UN Special Rapporteur on the Independence of Judges and Lawyers sent an open letter<sup>4</sup> to the Government of Samoa expressing concerns on the bills, noting that these revisions to the law potentially constitute a breach of Samoa's obligations under articles 2(3) and 14 of the ICCPR, which Samoa ratified in 2008.<sup>5</sup>
8. The OHCHR Pacific also made a written submission to the Parliamentary Standing Committee in May 2020, noting concerns related to the impact of the bills on the independence of the judiciary, and stressed *inter alia* the need to ensure an inclusive, transparent and participatory legislative review process prior to the adoption of the bills.
9. Subsequently, the Special Parliamentary Committee tasked with examining the bills conducted public consultation over a period of five months and amendments to the bills were reported to have been made. However, content of these consultations was never made publicly available.
10. In line with the Office of the Attorney General (OAG) guidelines,<sup>6</sup> stakeholder consultation should be concluded before a bill is presented before Parliament. In the present case, however, consultation only began after the second reading of the bills.
11. In June and December 2020, the UN Resident Coordinator offered assistance to the Government in aligning the three laws with international standards, but the offer was not acted on.
12. The main concerns regarding the Acts include the following:
  - (i), The creation of a separate lands and titles court hierarchy beyond the ambit of the Supreme Court and with exclusive jurisdiction over customary matters will lead *inter alia* to a parallel justice system with potential conflicts in jurisdiction and legislation. Removing the Supreme Court's right to review breaches of fundamental rights in customary decisions can also deprive individuals of their right to seek justice in the common law;

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<sup>2</sup> Australia Law Council, 8 May 2020 available at <https://www.lawcouncil.asn.au/media/media-releases/proposed-constitutional-amendments-in-samoa-concerning>

<sup>3</sup> New Zealand Law Society, 4 May 2020 available at <https://www.lawsociety.org.nz/news/law-society-statements/serious-concerns-raised-about-constitutional-law-changes-in-samoa/> <https://www.rnz.co.nz/international/pacific-news/415803/nz-law-society-raises-concerns-about-court-changes-in-samoa>

<sup>4</sup> Dated 26 May 2020.

<sup>5</sup> [https://www.ohchr.org/Documents/Issues/Judiciary/Communications/OL\\_WSM\\_26\\_05\\_2020.pdf](https://www.ohchr.org/Documents/Issues/Judiciary/Communications/OL_WSM_26_05_2020.pdf)

<sup>6</sup> <https://www.ag.gov.ws/wp-content/uploads/2018/10/legislative-final-draft-handbook-2008.doc-english-version.pdf>

(ii), while the power of the Head of State, when Parliament is in recess, to suspend the Chief Justice of the Supreme Court on the advice of the Prime Minister is not a new provision in the Constitution,<sup>7</sup> the absence of involvement of an independent judicial body in this process erodes the security of tenure of judges and threatens to undermine judicial independence;

(iii), the Judicial Services Commission, which has the power to appoint and remove judges, comprises of members of the executive branch and an indeterminate number of “members of the public” appointed by the Minister of Justice to form the quorum of three.<sup>8</sup> This opens up the potential for executive influence and can jeopardise the independence of judges; and

(iv), within the lands and titles court system, special leave of appeal can be granted to decisions made *before* the commencement of the Land and Titles Act,<sup>9</sup> potentially encroaching on the common law principles of *res judicata* and non-retroactivity.

13. While customary law has operated as the community governance and dispute resolution mechanism, the ultimate harmonisation of the two systems of law cannot be feasible without a careful and painstaking collection of customs and usages and distilling common principles from within. A prerequisite of this long-term exercise is a written record of customary jurisprudence.

14. The UN notes that these revisions are part of a broader discussion occurring in Samoa (and many communities globally) about how to integrate individual human rights with the important role customs and communal rights play in maintaining social cohesion. The UN supports this important discussion while noting that culture and individual rights are not inherently in opposition, as the Universal Declaration on Cultural Diversity outlines:

**Article 4 - Human rights as guarantees of cultural diversity**

*The defence of cultural diversity is an ethical imperative, inseparable from respect for human dignity. It implies a commitment to human rights and fundamental freedoms, in particular the rights of persons belonging to minorities and those of indigenous peoples. No one may invoke cultural diversity to infringe upon human rights guaranteed by international law, nor to limit their scope.*<sup>10</sup>

15. On 21 March 2020, Samoa issued a State of Emergency (SoE) proclamation<sup>11</sup> in response to COVID-19.<sup>12</sup> There have been concerns about its continued extension<sup>13</sup> despite having no instances of community transmission. Civil society groups have noted that certain restrictions

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<sup>7</sup> Under Sections 67 (5) of the Constitution Amendment Act 2020, the Head of State, acting on the advice of the Prime Minister, may at any time when the Legislative Assembly is not meeting suspend the Chief Justice from his or her office, and such suspension shall continue in force until the end of the next ensuing session and no longer.

<sup>8</sup> Article 79 of the Constitution Amendment Act states that the Judicial Service Commission shall consist of: (a) Chief Justice, as Chairman; (b) Attorney General of the government; (c) members of the public appointed by the Minister for Justice; (d) Ombudsman; (e) a retired Judge of the Supreme Court appointed by the Head of State, acting on the advice from Cabinet; and (f) the Registrar of the Supreme Court. The UN Special Rapporteur on the independence of judges and lawyers has stated that active politicians and members of the legislative or executive branches of power cannot simultaneously serve on a judicial council and the election of lay members of a council should be entrusted to non-political authorities and in no case should they be selected or appointed by the executive branch.

<sup>9</sup> Section 43 (3) of the Land and Titles Act 2020.

<sup>10</sup> <https://www.ohchr.org/EN/ProfessionalInterest/Pages/CulturalDiversity.aspx>

<sup>11</sup> Pursuant to the power of the Head of State to make emergency orders under Article 106 of the Constitution

<sup>12</sup> Samoa Constitution available here <http://extwprlegs1.fao.org/docs/pdf/sam132838.pdf>

<sup>13</sup> State of emergency began in Samoa on 21 March 2020 and is on-going at the time of writing.

are outside the scope of the initial emergency proclamation.<sup>14</sup> For instance, the swimming ban on Sundays have no clear public health justifications.

### *Recommendations*

- *Review the Constitution Amendment Act 2020, Judicature Act 2020, and the Land and Titles Registration Act 2020 to ensure compliance with Samoa’s obligations under IHR law, in particular the ICCPR and the Basic Principles on the Independence of the Judiciary. Recommendations in this regard include ensuring that:*
  - *The Supreme Court retains its role in enforcing the fundamental rights stipulated in Part II of the Constitution, as well as overseeing the decisions of the Land and Titles Courts;*
  - *The Chief Justice of the Supreme Court cannot be suspended by the Head of State acting on the advice of the Prime Minister;*
  - *The independence of the Judicial Services Commission by excluding active politicians and members of the executive branch of power and entrusting the election of lay members of the Judicial Services Commission to non-political authorities;*
  - *Judicial appointments are made on the basis of clearly defined criteria – including integrity, merit, training and qualification in law – and through a publicly declared process with due consideration given to increasing gender equity;*
  - *The Land and Titles Act does not have retroactive effect and repealing s43(3) so that the special leave to appeal is only applied to decisions made after the commencement of the Act.*
- *Continue efforts to harmonise customary and common law through keeping a written record of customary law, usages and decisions;*
- *Recalling Samoa’s obligation under article 4 of the ICCPR, periodically review the necessity and proportionality of state of emergency measures relating to COVID-19 and ensure that they do not have any discriminatory impact on certain groups;*

### **iii. Institutions and policies**

16. In 2016, the Office of the Ombudsman (formed in 2013) was accredited “A” status by the Global Alliance for National Human Rights Institutions. To date, the Ombudsman has published six reports on human rights in Samoa, including those focused on persons with disabilities, climate change, family violence, and the Village Family Safety Committee Pilot Project.<sup>15</sup>

### *Recommendations*

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<sup>14</sup><https://monitor.civicus.org/updates/2020/09/04/concerns-about-state-emergency-restrictions-samoa-and-proposed-facebook-ban/>

<sup>15</sup> <https://ombudsman.gov.ws/state-of-human-rights-reports/>

- *Ensure that the Ombudsman’s Office is adequately resourced to carry out its functions effectively in accordance with the Paris Principles;*
- *Expedite the implementation of the recommendations made by the Ombudsman’s Office.*

## **Implementation of Samoa’s International Human Rights Obligations**

### ***i. Equality and non-discrimination in the workplace***

17. In December 2020, ILO completed the legal review and presented the report “Violence and Harassment in the World of Work (C190)”, and provided recommendations for the ratification and application of C190 in Samoa.
18. The ILO Committee of Experts on the Application of Conventions and Recommendations (CEACR) has advised Samoa on the implementation of the Equal Remuneration Convention, 1951 (No.100) and the Discrimination (Employment and Occupation) Convention, 1958 (No.111). In 2019-2020, the Government of Samoa developed amendments to the Labour and Employment Relations Act (LERA) 2013 addressing *inter alia*, sexual harassment in the workplace and the recommendations of the CEACR. This has been approved by the Cabinet but is still awaiting passage through Parliament.
19. The UN notes that there are instances of discriminatory practice on the part of employers against pregnant women in recruitment and during employment. It is also noted that employers, especially those in SMEs, lack the capacity to deal with victims of domestic violence in the workplace.
20. Sex work remains a crime in Samoa and is punishable by up to 3 years in prison, making sex workers particularly vulnerable to violence and stigmatization due their unlawful status. It also exacerbates their lack of access to justice and essential health services.

### ***Recommendations***

- *Enact legislation to prohibit sexual harassment in the workplace and ratify the Violence and Harassment Convention, 2009 (No.190);*
- *Enact the draft Amendment to the LERA 2013.*

### ***ii. Discrimination against women***

21. In August 2017, Samoa hosted a visit by the UN Working Group (UNWG) on the issue of discrimination against women and girls in law and in practice. UNWG noted that major progress

is necessary in Samoa to change enduring cultural perceptions and gender roles, which is the root causes of violence against women.<sup>16</sup> It further noted that open dialogue on matters deemed taboo and alternative narratives on the meaning of *fa'a samoa* (the Samoan way) need to occur on a massive scale and cannot happen without the leadership of the Government, community and religious leaders, alongside women and men at all levels of society, titled and untitled.<sup>17</sup>

22. One of the key challenges for women is their low level of participation in village *fono* (councils), impeding their participation in village, district and national parliamentary representation. The CEDAW Committee (2018) expressed concerns that some villages prohibit women from holding *matai* (chief) titles and participating in village *fono*.<sup>18</sup> There are 17 villages which do not allow women becoming *matais* (an eligibility requirement to sit in most village *fono*, and to stand for election). While the number of women *matais* has increased since the 1960s, a 2015 study found that, of all village-based *matais*, only about 22% are women.<sup>19</sup>
23. As of 2021, Samoa has its first female party leader. The number of women serving as Supreme Court judges is 33%. For the second time in history, the Attorney General is a female. Samoa appointed its first female CEO of the Ministry of Justice and Court Administration and 46% of lawyers are female.
24. In the public service, women occupy 58.4% of executive management positions. However, only 37% of the position of Chief Executive Officer (CEO) are held by females despite efforts at the policy level to achieve gender balance.

### *Recommendations*

- *Reform village governance and village by-laws to remove barriers to the representation of women at all levels of governance;*
- *Amend the Electoral Act 2019 to remove the requirement of matai title to stand for election;*
- *Fully implement the recommendations contained in the CEDAW concluding observations of 2018 (CEDAW/C/WSM/CO/6) and the report by the UNWG on the issue of discrimination against women and girls in law and in practice (A/HRC/38/46/Add.1) with concrete action plans and allocation of financial and human resources.*

### **iii. Gender-based violence (GBV) and violence against children**

25. In 2017, NHRI conducted a “National Inquiry into Family Violence”, the first of its kind to be conducted in Samoa. Evidence, testimony and submissions were received from various stakeholders.

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<sup>16</sup> A/HRC/38/46/Add.1, para.91.

<sup>17</sup> Ibid.

<sup>18</sup> CEDAW concluding observations, November 2018, CEDAW/C/WSM/CO/6, paras.9 and 10.

<sup>19</sup> Leasiolagi Malama Meleisea, et al: ‘Political Representation and Women’s Empowerment in Samoa’ (2015) vol 1 Centre for Samoan Studies, National University of Samoa, pp 20,27,28,34,37.



26. Data from this Inquiry and the Samoa Family Safety Study (FSS) on GBV found that:
- a. Of women aged between 20 to 49 years old who were ever in a relationship, 60% had experienced some form of spousal abuse in their lifetime, and 46% experienced abuse in the last 12 months.
  - b. Life-time experience of violence across the population is 89% for girls and 90% for boys, with 69% of girls and 63% for boys having experienced violence in the past 12 months.
27. Currently most services such as shelters, counselling and rehabilitation are conducted by CSOs. As identified in the 2019 NHRI report, it is necessary for the Government to take the initiative in providing financial and technical assistance to victims of GBV.
28. FSS identified that village *fono* play a leading role in stopping Family Violence. The Village Family Safety Committee project in six Villages is one of the recommendations of the 2017 National Inquiry. Village bylaws were reviewed as part of the scheme to strengthen the customary governing framework against GBV.
29. In February 2021, MWCSO produced an Inter-agency Essential Services Guide (IESG). This guide outlines national Standard Operating Procedures for coordination of GBV services. A comprehensive national strategy and action plan to combat GBV are to be produced by the end of 2021.
30. At present, no health facility in Samoa meets international standards to provide GBV care. UNFPA is supporting the Ministry of Health to put in place guidelines and improve the quality of care on GBV prevention and response through the health sector.
31. In response to the high rates of GBV, the Criminal Procedure Act 2016 grants police the power to enter premises without a warrant to arrest an offender, or to prevent an offence likely to cause immediate or serious injury to another person, such as in the case of DV.
32. However, there remains strong opposition in legalising abortion even in cases of rape and incest, as evident in the consultations for the CEDAW review.

### *Recommendations*

- *Adopt a comprehensive strategy to combat GBV to ensure coordinated interventions, in line with CEDAW Committee's General Recommendation No.25 (2017) with adequate financial and human resources;*
- *End the practice of testimonies in courts regarding the morality or good character of perpetrators of violence by church leaders and others in position of authority in the community; strengthen the Domestic Violence Unit in the Police through training and the use of an effective data collection system; and establishing a Community Law Centre;*
- *Expand the definition of domestic violence in the Family Safety Act (2013) to include financial and economic abuse;*
- *Increase funding for quality support services for the victims of GBV.*

**iv. *Sexual orientation and gender identity***

33. During the previous review, Samoa noted the six recommendations to combat discrimination and prevent violence based on sexual orientation and gender identity, including recommendations to repeal provisions criminalizing sodomy between consenting adults. Sections 67, 68, and 71 of the Crimes Act 2013 criminalize sodomy, punishable by up to seven years of imprisonment.

*Recommendations*

- *Repeal all provisions in the Crimes Act which criminalize sodomy between consenting adults;*
- *In line with SDG Goal 16, undertake awareness-raising campaigns to combat stigma against LGBTIQ+.*

**v. *Administration of justice, including impunity, and the rule of law.***

34. In 2015, the Government of Samoa passed the Community Law Centre Act 2015 to provide legal aid and assistance in both criminal and civil matters. However, due to limited resources, the Act has not been enforced. Legal aid is currently only available for criminal cases.

35. Access to justice for persons with disabilities (PWDs) is also limited, in terms of reasonable accommodation within the justice process. Currently, the only assistance available is provided by NGOs on a voluntary basis.

36. The new Law and Justice Sector Plan recently finalized aims to improve the awareness and visibility of the rule of law and human rights through a coordinated sector approach. The Ministry of Justice and Courts Administration (MJCA) initiated the REACH programme in 2019 to enhance awareness of rights and access to services in the village.

37. The Samoa Prisons and Corrections Services had been moved under the Ministry of Police, leading to a shift of focus of the criminal justice system from merely punitive to incorporating rehabilitative elements. This is a step towards the United Nations Standard Minimum Rules for the Treatment of Prisoners.

38. The significant delays in the Samoa Courts is another impediment to the administration of justice. This is due to the huge backlog of cases underpinned by ineffective regulations, inefficient processes and insufficient resources. Judicial manpower is a contributing factor, for instance, only the President can chair an appellate jurisdiction, which means the Appellate Court can only sit once at a time, even with the years of backlog.

39. Samoa acceded to the United Nations Convention Against Corruption (UNCAC) on 18 April 2018.

#### *Recommendations*

- *Establish Community Law Centres and provide reasonable accommodation for PwDs in accessing justice;*
- *Conduct human rights trainings for law enforcement officials, including police and prison officials, on the rights of accused and detained persons. Ensure detention facilities meet international standards. Provide adequately resourced rehabilitation services;*
- *Adequately resource and streamline court processes to reduce backlog of cases for efficient and effective administration of justice.*

#### **vi. Rights to freedom of opinion and expression, association and assembly**

40. In December 2017, the Parliament passed legislation that reintroduced libel as a criminal offence, after its repeal in 2013. The reintroduction of criminal libel in Samoa was prompted by the rising popularity of anonymous bloggers who have posted allegations of corruption, misconduct and other serious crimes against prominent public figures. The Journalists Association of Samoa (JAWS) has stated that criminal libel law undermines the role of the media in society as a public watchdog and weakens its ability to hold those in power to account.<sup>20</sup>

41. In March 2018, the Prime Minister warned that Facebook and other social media platforms may be banned if bloggers using social media to attack the government did not start revealing their identities.<sup>21</sup>

42. The ILO CEACR in 2018 noted that public servants are not protected under the LERA 2013. Government workers should enjoy the right to join and establish organizations of their own choosing. The CEACR also recommended amending the Public Service Act 2004 to ensure public servants' right to unionise and participate in strike actions.

43. National elections are held in April 2021. NHRI raised concerns in March 2021 regarding the robustness of rules and the enforcement of protections for the election processes in Samoa.<sup>22</sup> Though provisions have been made by the Electoral Commission this year to enhance inclusiveness of elections e.g. pre-polling for PwDs, there remain concerns of village councils or individuals coercing or influencing voters' preferences. It is also noted that absentee and postal voting is not available in Samoa for diaspora.

#### *Recommendations*

- *Repeal libel as a criminal offense;*

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<sup>20</sup> Available at <https://www.rnz.co.nz/international/pacific-news/346728/samoa-journalists-association-says-govt-undermining-media>

<sup>21</sup> <https://www.rnz.co.nz/international/pacific-news/353729/samoa-pm-threatens-to-ban-social-media>

<sup>22</sup> Media statement, Office of the Ombudsman, NHRI Samoa: 'Citizens right to free and fair elections', 1 March 2021

- *Ensure that all forms of expression are guaranteed in accordance with article 19 of the ICCPR;*
- *Guarantee public servants' right to join and establish organizations of their own choosing;*
- *Amend the Public Service Act 2004 to guarantee public servants' right to strike;*
- *Guarantee freedom of choice in elections free from interference.*

**vii. *Right to social security and to an adequate standard of living***

44. Formal social protection coverage in Samoa is limited. There are no formal social protection benefits and services in place for PwDs.

*Recommendations*

- *Adopt policy and legislation to guarantee universal access to social protection with special measures in place for PwDs in line with the CRPD.*

**viii. *Right to work and just and favourable conditions of work***

45. Although employment contracts are a legal requirement, few employees in Samoa have written contracts and many never received a payslip. Revision of the 2013 LERA will introduce a spot fine of WST 600 for non-compliance, but labour inspection capacity remains limited.

46. A large part of the formal and informal sector is non-compliant with labour standards, many workers not being aware of their rights and lacking union coverage and protection. Despite enactment of Occupational Safety and Health regulations in 2002, unfavourable working conditions with no protection equipment are still present in Samoa.

47. Despite ratification of ILO Convention 182, child labour has not been eliminated due to a large number of families experiencing precarious living conditions, further deteriorated by the pandemic.

48. The revision to the LERA, once passed, will prohibit children under age 16 to work in any hazardous environment.

*Recommendations*

- *Adopt amendments to LERA to protect workers' rights*
- *Enact social protection legislation to reduce child poverty and eliminate child labour*
- *Consider establishing a labour court*

## **ix. Right to health**

49. The Samoa Health Sector Plan (HSP) 2019 – 2030 prioritises strengthening the public health system and has a central focus of utilising a *fa'a Samoa* initiative of delivering primary health care. This is a village-based approach which empowers and trains Village Women's Committees, utilising a family orientated community engagement strategy focused on combating NCDs and providing sexual and reproductive health services.
50. Fertility rates have dropped from 4.7 children per woman in 2011 to 3.8 in 2016. Unmet need for family planning declined from 45.6% to 35% but remains relatively high. Teenage fertility declined from 46 in 2001 to 31 children per 1000 teenage mothers in 2016.<sup>23</sup>
51. While there are no legal barriers for young people and adolescents in accessing family planning supplies and information, HIV and STI testing remain restricted to people aged 18 and over. Parental consent is required for people under 18.
52. Under the Crimes Act 2013, the provision of, or accessing an abortion is an offence with a penalty of up to 7 years imprisonment. This also applies to those who attempt to procure their own miscarriage<sup>24</sup>. The exception to criminal liability is if the termination of pregnancy is undertaken to preserve the woman's life, physical or mental health and the pregnancy is less than 20 weeks' gestation.<sup>25</sup> The criminalisation of abortion contributes to unsafe abortion and prevents women and girls from accessing essential and lifesaving health services.

### *Recommendations*

- *Amend the Crimes Act to legalize abortion, at least in cases of rape, incest, severe foetal impairment and risk to the health or life of the pregnant woman, and decriminalize abortion in all other cases, and set a clear timetable for implementation;*
- *Expand Adolescent and Youth Friendly Services to all facilities and remove the age of consent for HIV and STI testing.*

## **x. Right to food**

53. Samoa has a high prevalence of adult obesity.<sup>26</sup> Over 24% of the population lack access to safe and nutritious food. More than one-third of the average dietary energy consumed comes from

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<sup>23</sup> 2016 Census Report, SBS.

<sup>24</sup> S.113 Crimes Act 2013.

<sup>25</sup> S.116 Crimes Act 2013.

<sup>26</sup> Almost 46% as of 2016, FAO and SBS, "Food Security and Food Consumption in Samoa – based on the analysis of the 2018 household income and expenditure survey", 2020.

fats,<sup>27</sup> well above the WHO recommendation for a balanced diet. Vegetables is 18 times more expensive than cereals, oils and sugar.<sup>28</sup>

54. Food security is uneven throughout Samoa. Savai'i is the region with the highest prevalence, with more than one in three households being food insecure in comparison to less than one in five households in Apia.<sup>29</sup>
55. Equitable access to food in Samoa is negatively impacted by the high prevalence of violence against women. Eliminating GBV is imperative, not only because it violates human rights, but also because it reinforces many contributing factors affecting stability of livelihoods including food security.<sup>30</sup>

### *Recommendations*

- *Enforce school nutrition standards and introduce school feeding programmes;*
- *Introduce measures to discourage consumption of unhealthy food items including through imposition of taxes;*
- *Enforce the labelling requirements under existing laws and regulations including information regarding nutritional value.*

### ***xi. Rights of the child***

56. The finalisation of the Child Care and Protection Bill has been delayed for 7 years. The Government endorsed in 2020 the Child Care and Protection Policy and Implementation Plan.
57. However, significant gaps remain to be addressed. Samoa's minimum age of criminal responsibility of 10 years old (with *doli incapax* provision for children aged 10 to 12 years) is not in accordance with the CRC Committee's recommendation of at least 14 years old. Samoa's Young Offenders Act promotes a specialised approach for dealing with child offending, including establishment of a Youth Court and the use of customary dispute reconciliation mechanisms (*fa'aleleiga*) as a form of diversion. However, the Act focuses primarily on court proceedings, has limited special protections for children at the arrest and investigation stage, and applies only to children under 17 years, leaving out protections for children between 17 and 18 years old. It also gives the Youth court broad discretion to transfer young offenders to the Supreme Court to be tried and sentenced as adults.

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<sup>27</sup>Ibid, n24, p.33.

<sup>28</sup> Ibid, n24, p.20,22.

<sup>29</sup> Ibid, n24.

<sup>30</sup> <http://www.fao.org/fao-stories/article/en/c/1069792/>

<sup>31</sup> Subsequent research by CSOs in Samoa indicate the number may be 100 deaths.

<https://www.samoobserver.ws/category/editorial/80417>

58. In 2019, an outbreak of measles killed 83 people in Samoa,<sup>31</sup> 87% of whom were children under the age of 5.<sup>32</sup> This constitutes a significant failing to protect children's right to life, for it was a preventable outbreak that resulted from long-term, cumulative failures in healthcare planning and provision of routine immunisation, compounded by the government's slow recognition of the urgency of the problem.
59. The COVID-19 pandemic highlighted key vulnerabilities within the education system. Samoa had months of unplanned school closures in 2020 (despite no cases of COVID-19), exacerbating the low rates of educational completion after the closures in 2019 due to measles.
60. In its 2020 Observations on the Minimum Age Convention, 1973 (No. 138), the CEACR noted that section 20 of the Education Act 2009 prohibits school-aged children from engaging in street trading or carrying out work of any kind during school hours. However, s2 of the same Act defines a school-aged child as between 5-14 years of age who has not completed the eighth year of school.
61. The discussion concerning the application by Samoa of the Worst Forms of Child Labour Convention, 1999 (No. 182) took place at the 107th Session of the Conference Committee on the Application of Standards in June 2018. The Committee urged the Government to take the necessary measures to ensure that the use, procuring or offering of children between the ages of 16 and 18 for the production of indecent materials is prohibited.
62. According to the ILO Rapid Assessment Report on Children working on the streets in Apia, 2017, the majority of the 106 children interviewed started working on the streets due to the fact that the family needed income. Children work as vendors as young as 7 years of age for long hours (5-12 hours a day). This situation is worsened by the economic impact of the SoE since March 2020.
63. Survey data indicate that around 38% of child labour in Samoa is performed by children under 15. The government established a multi-agency task force to monitor exploitation of children in the formal and informal economy, including through regular inspections in the streets of Apia and rural areas and to raise awareness on the issue of children in street vending.

### *Recommendations*

- *Prioritize the adoption of the Child Care and Protection Bill;*
- *Operationalise the Child Care and Protection Policy and Implementation Plan and allocate sufficient human and financial resources to effectively implement the plan;*

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<sup>31</sup> Subsequent research by CSOs in Samoa indicate the number may be 100 deaths.

<https://www.samoaoobserver.ws/category/editorial/80417>

<sup>32</sup> [https://www.thelancet.com/journals/laninf/article/PIIS1473-3099\(20\)30053-0/fulltext](https://www.thelancet.com/journals/laninf/article/PIIS1473-3099(20)30053-0/fulltext)

- *Establish Office of the Children’s Commissioner;*
- *Ensure effective enforcement of the IESG for GBV and Child Protection including through building capacity of relevant sectors;*
- *Amend the Young Offenders Act to align with international juvenile justice standards, including raising the minimum age of criminal responsibility;*
- *Ensure the provision and ready access of essential health services, including immunization, for all children;*
- *Raise the age of completion of compulsory schooling to 15 to be in line with the minimum age for admission to work.*

**xii. Persons with disabilities**

64. Since the ratification of the CRPD, the government put in place policies to address rights of PwDs, e.g., the Samoa Disability Partnership Programme 2018-2022 and the establishment of the Disability Taskforce. The NHRI also focused on the rights of PwDs in their 2016 State of Human Rights Report and provided recommendations.
65. The 2019 NHRI Report recommended that a disability legislation for Samoa in line with the CRPD is crucial for applying a rights-based approach to disability and for recognising PwDs as rights holders.
66. In the same Report, gaps were identified in the Mental Health Act 2007 regarding its compliance with the CRPD.
67. To date, Samoa lacks formal social protection for PwDs. With the exception of those who have been injured in the workplace, PwDs do not receive any benefits and no specialized services are in place. The MWCSO is currently finalizing the new National Disability Policy. The Policy was informed by an analysis of disabilities undertaken by the Samoa Bureau of Statistics (the Samoa Disability Monograph, 2018), which documented the extent of the disabilities and their impact on livelihoods. It found that PwDs are five times more likely to have never attended school compared to persons without disabilities, and only one in twenty PwDs are in paid work.
68. The health needs of the persons with disabilities are not specifically provisioned by the Government. Like all citizens, Samoans with disabilities have equal rights to access national health services. However, PwDs struggle to access specific care and items (such as catheters) necessary to meet their health needs.
69. Physical access considerations for PwDs have been taken into account, but issues remain in regard to transportation for health purposes, access to nearby private health practitioners, cost of pharmaceutical drugs, and specialized training and support for care workers.

**Recommendations**



- *Adopt and adequately resource the implementation of the National Disability Policy;*
- *Develop disability-specific legislation utilising a rights-based approach that ensures equal rights and inclusion of PwDs in all aspects of life;*
- *Review and amend the Mental Health Act 2007 in compliance with the CRPD;*
- *Allocate specific funding for the provision of specialized medical items for PwDs.*

***xiii. Climate change and human rights***

70. As a Small Island Developing State with over 70% of its infrastructure and population located in coastal areas, Samoa remains highly vulnerable to the emerging climate crisis and its related consequences, including negative impacts on human rights. Samoa updated the National Climate Change Strategy 2015 – 2019<sup>33</sup> with the adoption of Samoa Climate Change Policy 2020-2030 and the Samoa 2040. While aligning with all international commitments related to climate change, neither adopts a human rights approach.

***Recommendations***

- *Revise all environmental and social policy, legislation and regulations to protect human rights in climate change adaptation and mitigation efforts, including through dedicated social protection measures for those most affected;*
- *Recognising the impact of climate change on human security, introduce in the Constitution and guarantee the fundamental right to development, premised on the creation of living conditions that safeguard rights and freedoms against disasters;*
- *Implement all relevant recommendations of the NHRI 2017 State of Human Rights Report on climate change.*

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<sup>33</sup> CEDAW, concluding observations on the sixth periodic report of Samoa (2018), CEDAW/C/WSM/CO/6, paras.41 and 42.

## ***Annex – List of Stakeholders Consulted by the Resident Coordinator for the UNCT Report***

In informing the United Nations Country Team (UNCT) submission to the Human Rights Council for the Third Universal Periodic Review (UPR) of Samoa, a series of stakeholder consultations had been conducted to obtain a well-rounded and in-depth understanding of the human rights landscape in Samoa.

The stakeholders were consulted on the fulfilment of international human rights obligations, and issues pertaining to the implementation of the Second UPR Recommendations within their respective areas of work, or scope of expertise.

The list of stakeholders who accepted the invitation and attended consultations is as follows:

1. The Samoa Law Society (SLS) – 13<sup>th</sup> January 2021
2. The Ministry of Justice and Court Administration (MJCA) – 17<sup>th</sup> February 2021
3. The Ministry of Women, Community Development (MWCSO) – 17<sup>th</sup> February 2021
4. The Office of the Electoral Commissioner (OEC) – 18<sup>th</sup> February 2021
5. The Journalist Association of (Western) Samoa (JAWS) – 19<sup>th</sup> February 2021
6. Samoa Chamber of Commerce and Industry (SCCI) – 22<sup>nd</sup> February 2021
7. Samoa Workers' Congress (SWC) – 23<sup>rd</sup> February 2021
8. Office of the Clerk of the Legislative Assembly (OCLA) – 24<sup>th</sup> February 2021
9. Ministry of Commerce, Industry and Labour (MCIL) – 25<sup>th</sup> February 2021
10. Nuanua O Le Alofa (NOLA, a local disability advocacy organisation) – 2<sup>nd</sup> March 2021
11. The Samoa Victim Support Group (SVSG) – 2<sup>nd</sup> March 2021
12. The Judiciary – 9<sup>th</sup> March 2021
13. The Office of the Ombudsman – 10<sup>th</sup> March 2021
14. The Office of the Attorney General (OAG) – 10<sup>th</sup> March 2021
15. Parliamentarian of the Opposition – 11<sup>th</sup> March 2021
16. The Samoa Family Health Association (SFHA) – 16<sup>th</sup> March 2021

On 12 March, the UN Resident Coordinator jointly with OHCHR Pacific held a roundtable on human rights and the three laws adopted by the Legislative Assembly of Samoa in 15 December. The roundtable was opened by the Prime Minister of Samoa and attended by the Attorney General and her team. International participation included Hon. Sven Spengemann, MP, House of Commons of Canada, Chair of the Foreign Affairs and International Development Committee of the Houses of Commons and Hon. Aruna Devi Narain, Mauritius Supreme Court Judge and CEDAW member.