

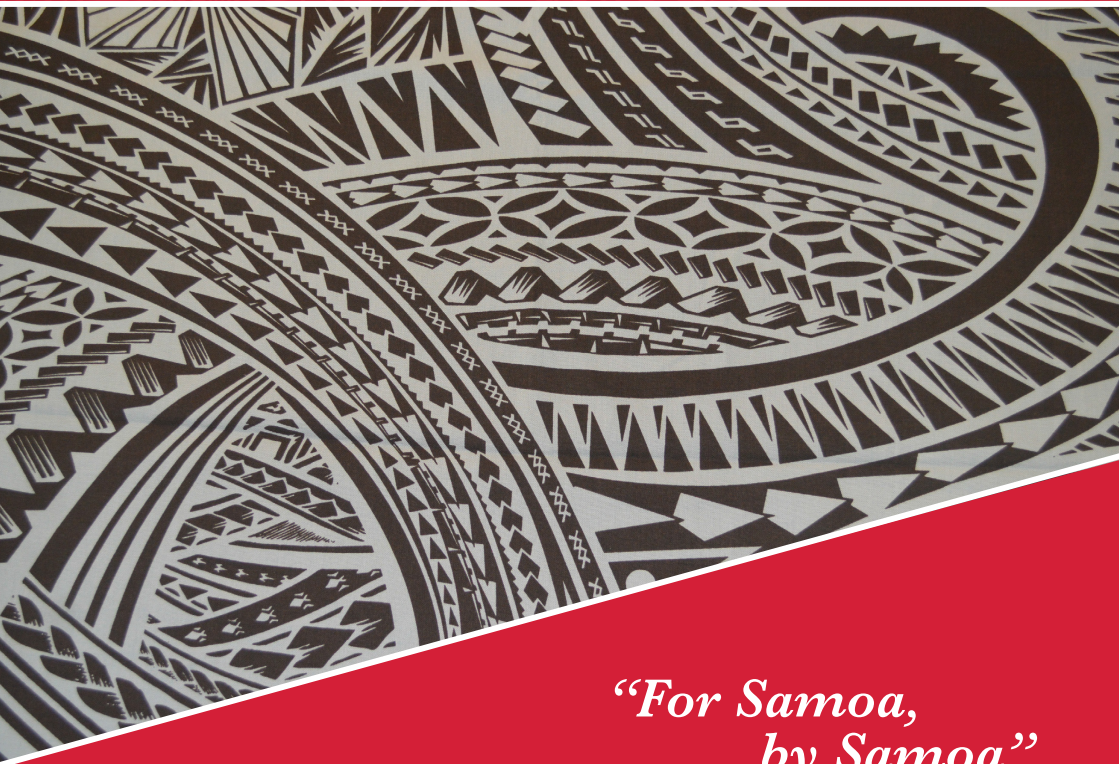
OFFICE OF THE OMBUDSMAN &  
NATIONAL HUMAN RIGHTS INSTITUTION



Komesina o Sulufaiga



**OMBUDSMAN**  
NHRI SAMOA



*“For Samoa,  
by Samoa”*

**STATE OF HUMAN  
RIGHTS REPORT**

**2015**

**SUMMARY**

## Summary

In 2013, the Office of the Ombudsman became Samoa's National Human Rights Institution (NHRI). An NHRI is an independent mechanism of national human rights protection and promotion. Pursuant to the *Ombudsman (Komesina o Sulufaiga) Act 2013*, the NHRI has prepared Samoa's first periodic State of Human Rights Report (SHRR).

The Report discusses human rights in the Samoan context, including a brief overview of Samoa's international human rights obligations and the rights contained within the Constitution of Samoa. Importantly, the Report discusses the relationship between Fa'asamoa and international human rights, including the relationship between individual and community rights. It also attempts to dispel misconceptions that currently exist in Samoa about the nature and purpose of human rights.

Vulnerable populations are the main focus of the Report which highlights the need for better safeguards for equality and respect for **women, children, people with disabilities (PWDs) and prisoners**. It was clear from the research conducted that these groups are the most vulnerable in Samoan society and their basic human rights need increased protection.

The report also looks at the **human rights components of health** to ensure that the **community, family, personal and environmental health** of all Samoans is adequately protected. It considers **religious and economic freedom** to better allow Samoans spiritual and financial fulfilment.

The Report concludes with a discussion of the emerging issues of **mental health and freedom of speech**. These issues arose in outreach and will be followed up with in subsequent reports as more data and dialogue is collected.

Contained within the Report are recommendations to relevant Government Ministries and agencies to better protect the human rights of all Samoans. All recommendations relate to four categories: **(1) outreach and education; (2) funding; (3) policy; and (4) data collection**.

The Report strives to paint as complete a picture as possible of Samoa's current human rights situation, including protections and improvements which could promote the progressive realisation of human rights in the country.

## **Fa'asamoa & Human Rights (Individual and Communal)**

Human rights are underpinned by core values of respect, dignity, equality and security for everyone. Similarly, *Fa'asamoa* or the Samoan way of life holds core values that guide social interaction such as respect, dignity, love, protection, and service, which mutually reinforce human rights. *Fa'asamoa* is a unique way of life. It prescribes an all-encompassing system of traditional roles and responsibilities within the family and community. This is the context in which the individual exercises his/her rights and freedoms. However, a significant proportion of Samoans consulted believe that human rights and *fa'asamoa* conflict. This conflict is central to the human rights issues Samoa experiences and unless it is resolved, the acceptance of human rights in Samoa will continue to be a challenge.

The SHRR consultations also raised concerns regarding the conflict between village council decisions and individual freedoms within the village. This ranged from restrictions on the establishment of new religions and banishment, to general statements relating to the severity and burden of village rules. Under *Fa'asamoa*, the individual is conscious of personal rights and dignity, but recognises and accepts the role and ultimate authority of the village council. However, village councils must properly exercise their authority, taking into account the individual's human rights and striking an important balance between communal rights and individual rights. While it is desirable not to undermine the authority of *Ali'i* and *Faipule* in Samoan communities, when the individual is protected against unjust or unfair governance or other unreasonable interference, society is also protected.

## **Women**

From the Survey and research, three interrelated issues surfaced related to women's rights: (1) **tackling gender role stereotyping;** (2) **recognising the unequal participation in political and economic life;** and (3) **preventing high rates of violence against women.**

Gender role stereotyping disadvantages women in many areas of life, particularly *nofotane*, who tend to be the most disadvantaged. During focus group discussions with women and girls, the issue of *nofotane* status was most often raised related to abuse suffered at the hand of her husband or mother-in-law, for which no local remedy was available. Breaking stereotyped roles and responsibilities for women is necessary in achieving gender equality. It is important to be reminded that “*E au le inailau a Tamaita'i*” (Legacy of women is one of total achievement).

Samoa ranks among the lowest in the world (131 out of 139) for women's political participation. Since independence in 1962, women have remained below 10% of Samoa's parliamentarians. The *Constitutional Amendment Act 2013* requiring a 10% quota of women parliamentarians will be enforced during the 2016 election. In order to get to the root cause of unequal participation, it is important to address women's

exclusion at the village level. According to the 2011 Census, only 11% of *matais* are female. The NHRI believes that unless women's involvement in decision making is resolved at the village level, the underrepresentation of women in Parliament will remain a challenge. The SHRR consultations indicated that women lack confidence in their decision making abilities. If women are encouraged to lead (or even be involved) at the village level they will be more confident to lead in Parliament.

Commendably, a high proportion of urban businesses in Samoa are owned or managed by women. In Samoa, there are approximately equal ratios of women in executive and middle management positions in the public sector and the proportion of women in formal employment (excluding manual labour) is almost equal to men. However, while there are positives for urban women, rural women lack the employment opportunities available to urban populations. Work opportunities for Samoan women are concentrated in the informal employment sector. According to the International Labour Organisation, informal employment lacks protection from non-payment of wages, compulsory overtime or extra shifts, lay-offs without notice or compensation, and unsafe working conditions; it also lacks social benefits such as pensions, sick pay and health insurance. Women and other vulnerable groups can be excluded from other opportunities and are forced to take informal low-quality jobs. To elevate women's status overall, they must be economically empowered and able to earn proper wages.

Finally, the lack of information and statistical data regarding the high prevalence of violence against women and its nature, extent and causes is a major concern and contributes to lack of enforcement activities. It was particularly disconcerting that the data made available by the Domestic Violence Unit of the Ministry of Police was scant and insufficiently disaggregated. A government cannot claim to be dedicated to ending violence against women if its police force does not take seriously the collection of statistical data on domestic and sexual violence disaggregated by sex, age, nationality and relationship between the victim and perpetrator.

While the human rights system—laws, policies, and conventions—can be used to hold Samoa accountable for obligations undertaken pursuant to treaties, laws can only go so far. Change has to be felt in the culture as well as the legal code. The culture of indifference to violence towards women that prevails in Samoan communities must be dismantled to maintain the pedestal *Fa'asamoa* places women upon.

## **Children**

From the Survey and research, several issues arose that must be addressed at local and national levels: (1) **correcting the misunderstanding about the rights of the child;** (2) **providing access to adequate education;** (3) **addressing child labour;** and (4) **preventing abuse, including sexual abuse and incest.**

Village and church leader consultations indicated widespread misconceptions about the human rights of Samoa's children. There appear to be three factors contributing to

this. First, a commonly raised concern was that human rights give children the freedom to misbehave and disobey their parents; this may be a result of the translation of the term ‘human rights.’ Second, traditionally within the family Samoan children must obey their parents without further discussion. Third, children themselves have misunderstood what their rights are, adding to the concerns raised by parents.

Samoa has demonstrably achieved universal primary education through the Samoa School Fee Grant Scheme (SSFGS). Further, Samoa has exceeded its obligations under the Convention on the Rights of the Child (CRC), extending the SSFGS to years 9-11 of secondary education. Despite these positive efforts, access to education is still restricted by the hidden costs of education and increasing drop-out rates.

A common issue Survey participants, including children themselves, identified is children as street vendors. Child labour is largely driven by vulnerabilities caused by poverty. A child has the right to be protected from economic exploitation that can interfere with the child's education under Article 32 of the CRC. When children are unable to go to school because they are forced by their families to sell goods, they are unable to improve their future prospects and the cycle of poverty continues. Further, taking on financial responsibilities for their family's livelihood—sometimes as the sole breadwinner—places a significant emotional and mental burden upon children. Unless the Government deals with the broader issue of poverty and families are empowered to choose education over exploitative labour, this issue will continue to be a challenge.

Over one-third (34%) of Survey respondents witnessed domestic abuse against a child in the past year, although the rate of abuse is likely higher as many village participants did not view excessive discipline of children as child abuse. In village focus groups, participants often discussed the rights of parents to physically discipline a child in whatever form they choose because it is an effective method of discipline that has been used over the generations. Child rearing in Samoa is strongly influenced by cultural and Christian practices and values. The norm of hitting as a form of physical punishment in Samoa makes the line between discipline and abuse blurred. Children and parents often accept violent punishment, not realising it is abuse.

It is important to highlight that the CRC does not take away the right of parents to discipline their children. However, any form of discipline involving violence is unacceptable. While the CRC does not specify what constitutes appropriate punishment, the CRC Committee is clear that parental guidance must not take the form of violent or humiliating discipline to protect the child from all forms of physical and mental violence. Specific definitions of what is considered excessive or abusive are left to national law. National law must provide guidance on what constitutes reasonable and unreasonable punishment to distinguish between discipline and excessive punishment (abuse). The NHRI believes that violent discipline harms

children and should be considered excessive and abusive, and in terms of national law, defined as unreasonable punishment.

Sexual abuse and incest is condemned across the board by human rights law and national law. It is also condemned within *Fa'asamoa* because it represents a total breakdown of the responsibility of the *aiga*—mothers, fathers, uncles, aunts, grandparents and other relatives—to protect and safeguard children. Despite being forbidden within the law and culture, the NHRI is concerned that this problem is becoming increasingly common and there is a lack of information and statistical data on its nature, extent and causes. It is likely that incest is underreported due to its taboo nature and the fear and shame that victims may feel. In Samoa, the issue of broader family reputation also plays a role in underreporting, silencing the child victim and protecting the adult perpetrator. The Survey indicated that young kids are not aware of where to report child abuse or incest, demonstrating a lack of awareness of the laws already in place to support victims.

### **Persons with Disabilities**

From the Survey and research, two interrelated issues have surfaced that must be considered at village and national levels: (1) **addressing the fundamental lack of awareness around equal participation of persons with disability;** and (2) **facilitating all forms of access for persons with disabilities.**

60% of the Survey respondents consider PWDs to have the right to participation in society on an equal basis with others. However, the qualitative data and focus group discussions showed a general lack of awareness of what equal participation constitutes and its implications for PWDs. For example, when asked about the right to marry, almost all participants felt PWDs should not marry. The Ministry of Women, Community and Social Development believes greater awareness of the rights of PWDs is needed, particularly in rural and remote areas. This should be achieved through awareness-raising throughout society, including at the family level, to foster respect for the rights and dignity of PWDs.

For PWDs to participate fully in all aspects of life, the Government must take appropriate measures to facilitate all forms of access, on an equal basis with others, to the physical environment, transportation, information and communication, to other public facilities and services, both in urban and rural areas, and to social and economic empowerment through access to education and employment—the focus of the SHRR.

While many of Samoa's laws and policies related to PWDs are in line with relevant international human rights law, Samoa has to make further efforts to implement these properly. In education, our consultations found that disabled children get insufficient attention and poor treatment from teachers. This is a result of a serious gap in the capability and training of teachers to provide appropriate education to students with disabilities. In employment, only 2.4% of PWDs engage in paid work outside the

home and 37.8% do not work (Adult Disability Identification Census 2002). More needs to be done to actively promote an inclusive approach to the employment of PWDs, for example the Ministry of Commerce, Industry and Labour's job and apprenticeship programmes currently make no effort to cater to the specific needs of PWDs. Raising awareness, equal participation of PWDs and facilitating all forms of access, particularly through PWD inclusion in education and employment, will help Samoa implement existing laws and policies and meet its international obligations.

### **Prisoners**

Following its first inspections of places of detention to monitor facility conditions, assess the basic standards and identify any areas for improvement the NHRI produced the Detention Centre Inspections Report 2015 which clearly indicated that prisoners are one of the most vulnerable groups in Samoan society. Securing the rights of persons in detention, a population that is often forgotten, must be addressed. *Feamanaiaa'i* in the *Fa'asamoa* calls for the mutual recognition, acknowledgment and accommodation of one another's humanity, position and responsibilities in society. *Feamanaiaa'i* is reflected in daily interactions, and must be extended in full to detainees in prison despite their convictions. To properly do so the key issues identified in the report must be addressed: (1) **decreasing overcrowding in the main prison**; (2) **improving access to water, sanitation and hygiene**; (3) **addressing the lack of basic health care**; (4) **providing rehabilitation and reintegration activities**; and (5) **upgrading the substandard conditions of Tuasivi Police Custody Cells**.

### **Community, Family and Personal Health**

Human rights require that quality health systems are available, accessible and acceptable. From the Survey, the most commonly agreed-upon issues were: (1) **improving the affordability of health care**; (2) **improving the accessibility of health care**; and (3) **improving the quality of health care**.

Only one-quarter (25%) of Survey respondents found health care affordable, and even if they did agree it was affordable, the qualifying answers often indicated that it may not be for rural families. Despite the fact that it is relatively cheap to see a doctor (usually around \$10), it is apparent that poor families from rural areas still find this unaffordable. The NHRI believes this issue must be addressed by convincing families to prioritise health and through action on the broader issue of poverty. It is a matter of educating families and communities about the collective responsibility of public health and the benefits of making healthy choices.

Less than one-third (32%) of respondents could access their nearest medical facility in under 30 minutes. This compounds the issue of affordability as the cost to get to a clinic can be prohibitive to those who live far from medical care. This was a clear problem for the villages consulted in Savaii, Manono and Apolima, as many of them must travel for hours to seek medical attention. Further, the lack of ambulatory care

and emergency response, particularly for rural areas, is also an issue—several participants wrote of family members dying while on the way to emergency care.

The majority of Survey participants (60%) found the quality of healthcare unsatisfactory. The most common complaint was the limited number of doctors, especially in rural Savaii, Apolima and Manono. There is a clear disparity in access to health care for rural and remote communities compared to urban communities.

It is important to acknowledge the limited capacity of Samoan health care staff (e.g. lack of equipment, workforce shortage, etc.). Regardless, many communities are disappointed in the affordability, accessibility, and acceptability of health care in Samoa, which calls for appropriate responses from service providers and policymakers.

Many women and youth do not have access to the information and support to protect their family and personal health, of which sexual and reproductive health is an essential element. Several issues must be both acknowledged and addressed at local and national levels: (1) **addressing teenage pregnancy**; (2) **tackling the high prevalence of sexually transmitted infections (STIs)**; (3) **considering the health of mothers during unwanted pregnancy**; and (4) **acknowledging the need for family planning and comprehensive sexuality education**.

According to the Ministry of Health, the birth rate for women aged 15 to 19 is 39 births per 1000. In 2014, the Samoa Family Health Association (SFHA) treated 19 patients under age 17 during pregnancy, many of whom needed counselling throughout the process. All of those patients sought alternatives to bringing the pregnancy to full term. Samoa Victims Support Group (SVSG) also voiced concerns about unwanted pregnancy and the risks girls take to hide their pregnancies from families for fear of being banned or beaten. This is a human rights issue and hostile social and cultural attitudes towards pregnant teenagers can also result in the violations of other human rights, such as the rights of the child. The increase in unwanted babies being left in sewage systems indicates a serious need for publically addressing this issue and supporting young mothers instead of shunning them.

According to the Secretariat of the Pacific Community, Samoa has the highest prevalence of STIs in the Pacific Region coupled with one of the lowest contraceptive prevalence rates. The Second Generation Surveillance Survey 2008 revealed an extremely high prevalence of Chlamydia, with 71% of youth under 25 infected. Fortunately, the government provides treatment for STIs free of charge at public clinics. However, due to the taboo nature of the issue and the harsh judgment by health professionals (particularly towards youth), use of such services is not optimised. Condom use rates in Samoa are generally low, mostly due to the lack of awareness and access, as well as a lack of acceptance of condom use among religious leaders. As such, the challenge is to convey the seriousness of this issue despite its taboo nature and create dialogue as well as solutions to this growing problem.



The most effective way to prevent unwanted pregnancy is through the use of contraception. The majority of survey participants (60%) and village leaders (73%; particularly rural women leaders) agreed that there should be better access to birth control for both men and women. Even church leaders supported better access to birth control, highlighting women's right to choose how many children she has and when she has them. However, consideration of a mother's health must also expand to include the circumstances under which she becomes a mother.

According to SFHA, 36 women sought unsafe abortions for unwanted pregnancies in 2014, although these are only the documented cases. Currently, there is no provision to allow termination of pregnancy which results from sexual violence or incest. This is concerning considering that evidence suggests that pregnancy from these criminal acts is more common than official statistics recognise. These topics are off-limits in many social and familial environments, and the emotional, physical and mental burden often falls solely on the pregnant mother, who does not have many support options outside of SFHA and SVSG.

Comprehensive Sexuality Education (CSE) is a rights-based and gender-focused approach to sex education that equips young people with the knowledge, skills, attitude and values to develop a positive view of their sexuality in the context of their emotional and social development. A common misconception exists that CSE and access to condoms encourage premarital sex. This was a subject that many church leaders disapproved of, particularly for children and youth, but given the current rate of STIs and unwanted teenage pregnancy, it is a topic that must be discussed. Indeed, good sex education, delivered in the context of religious and social norms, can in fact prevent premarital sex by providing youth with a full understanding of the consequences of their actions. In the event that youths decide to engage in premarital sex regardless, they are equipped with the knowledge and contraception to prevent adverse consequences for their health and future.

### **Environmental Health**

Living in a clean and healthy environment is fundamental to the wellbeing and sustainable livelihoods of Samoans. Human Rights Council Decision 25/21 recognises that States have obligations under human rights law which are relevant to the enjoyment of a safe, clean, healthy and sustainable environment. From a human rights perspective, water and sanitation and climate change are the most pressing issues: (1) **ensuring a consistent and clean water supply, particularly in rural areas;** and (2) **that protection from the impacts of climate change is a human rights issue.**

While the majority (68%) of Survey respondents reported that they have regular access to clean water, qualitative responses and focus group discussions indicated that hygiene and sanitation remain problems for many areas. Water supply is a particular issue in Savaii, Manono and Apolima.

The majority (76%) of the Survey respondents and the vast majority (93%) of village leaders believe that protection from the impacts of climate change is a human rights issue. The impacts of climate change are disproportionately borne by rural communities who rely upon natural resources for their livelihoods. 70% of Samoa's population and infrastructure are on low-lying coastal areas at risk to rising sea levels and extreme weather events. This is an issue which will directly, and potentially severely, impact the enjoyment of human rights, in particular the right to an adequate standard of living and security. Further, the likelihood that people will be displaced from their land as a result of natural disasters and rising sea levels is a serious concern. The concept of displacement and resettlement will have to be addressed in a culturally sensitive manner, initially through education and awareness-raising in communities and with the village *fono* and ultimately supported by government policy.

Samoa has made significant progress in adaptation efforts, particularly considering its limited size and capacity to respond to such a widespread issue. However, efforts are still needed to ensure that mitigation activities are adequately funded. The Government should put in place institutional and policy measures to appropriately coordinate and mainstream climate change programmes and policies at a national level to support climate change mitigation and adaptation.

### **Religious and Economic Freedom**

In church and village consultations, many concerns raised related to **restrictions on the freedom of religion**. In church consultations, the National Council of Churches (NCC) members indicated that the freedom of religion is falsely defined in Samoa: that the freedom was intended to only allow choice of a Christian religion, not to allow a broad range of religions into the country. They further noted that all new religions should be vetted before being allowed in Samoa to ensure that they worship God. Further, the NCC is apprehensive about the diversification of the Christian faith.

In consultations with villages, issues arose regarding the freedom of choice and freedom from coercion with regards to religion. Some villages only allow a single church, or ban the creation of new formal congregations; while others allow their people to practice any religion outside of the village. These practices restrict the freedom to choose a minority religion. For example, the Muslim mosque only has freedom to operate because it is on freehold land in a non-traditional village where approval is not controlled by village chiefs. Further, minority religions voiced concerns over the ability of their members to practice the religion of their choosing when married into another family that does not share the same faith.

The Government's Commission of Inquiry (COI) regarding the introduction of new religious groups made it clear that religious freedom under Article 11 of the Constitution belongs to the individual, not a specific religion and that there should be no restrictions on new religions in Samoa. Limiting or restricting religious freedom

would be against human rights norms and undemocratic. The NHRI refers to the COI Report and its findings and strongly believes that it should be upheld and enforced.

In addressing Poverty Reduction the main issue identified from the Survey that relates to poverty was **reducing the cost of living**. Based on consultations and research, the NHRI believes that in order to reduce the cost of living Samoa must: (1) **increase employment opportunities, particularly for the youth**; (2) **increase community development**; and (3) **mitigate cultural and religious financial obligations**.

### Emerging Issues

Mental health is not widely discussed in Samoa, but trends discovered in the Survey suggest that it should be. There are three emerging mental health issues to consider: (1) **providing a basic understanding of what mental health is and the services available**; (2) **addressing the link between mental health and abuse**; and (3) **expanding suicide prevention strategies**.

Freedom of speech is commonly used to measure the extent to which governments are authoritarian and how free citizens are to express their opinions. Freedom of expression is indispensable for a person's full development and essential for any society. Concerns have been raised regarding the *Media Council Bill* (MCB) and its possible implications for the freedom of speech and expression, particularly for the media. Pending the passage of MCB, the issue here appears to be a **gap in the public's understanding of the direct relationship between freedom of speech and media freedom**.

### Conclusion

The human rights issues identified in the SHRR present challenges to overcome. The Government has taken a number of progressive legal and policy initiatives to address these issues. However, inadequate implementation of these measures due to insufficient resources, the need to dispel misconceptions around human rights, and the lack of concerted efforts to collect meaningfully disaggregated data continue to act as an obstacle to the progressive realisation of human rights, especially for Samoa's most vulnerable.

The SHRR attempts to highlight existing gaps between the recognition of human rights in the country and their implementation. The SHRR also attempts to illustrate human rights issues within the Samoa context to educate and encourage acceptance of human rights in Samoa. The NHRI hopes that the recommendations provided will serve as a catalyst for change and that the second cycle of the Universal Periodic Review will highlight the achievements Samoa has made and the further actions it must take to meet its human rights obligations.