



Komesina o Sulufaiga

National Human Rights Institution of Samoa

# Advisory Council Handbook

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## Advisory Council Handbook

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## Introduction from the Ombudsman

It is my absolute pleasure to welcome you to the Advisory Council of the National Human Rights Institution (NHRI) of Samoa. We have been tasked with protecting and promoting human rights in our country – a significant and greatly responsible challenge – and I am glad to have you alongside me.



The Office of the Ombudsman was given its human rights mandate by the Ombudsman Act 2013 and I immediately knew that I would need support in fulfilling those new duties.

The Advisory Council is the eyes and ears of the National Human Rights Institution - speaking up for the vulnerable, identifying issues of human rights violations and helping to bring to the Nation's attention the various ways in which we already entrench human dignity and compassion into our society. We are here to protect and prevent, but also to celebrate our achievements.

This handbook is designed to provide you with the essential basics for your role on the Advisory Council. It outlines the basic concept of human rights, examines the role of an NHRI, specifies the mandate of the Office, and explores your role in detail.

I look forward to your contributions and would like to express my gratitude for your admirable commitment to the betterment of our society.

Kind regards,

A handwritten signature in dark ink, which appears to read 'Maiava Iulai Toma'. The signature is fluid and cursive, written on a light-colored background.

Maiava Iulai Toma  
Ombudsman of Samoa

## What are Human Rights?<sup>1</sup>

Human rights are rights inherent to all human beings, whatever our nationality, place of residence, sex, national or ethnic origin, colour, religion, language, or any other status. We are all equally entitled to our human rights without discrimination. These rights are all interrelated, interdependent and indivisible.

Universal human rights are often expressed and guaranteed by law, in the forms of treaties, customary international law, general principles and other sources of international law. International human rights law lays down obligations of Governments to act in certain ways or to refrain from certain acts, in order to promote and protect human rights and fundamental freedoms of individuals or groups.

### Universal and inalienable

The principle of universality of human rights is the cornerstone of international human rights law. This principle, as first emphasized in the Universal Declaration on Human Rights in 1948, has been reiterated in numerous international human rights conventions, declarations, and resolutions. The 1993 Vienna World Conference on Human Rights, for example, noted that it is the duty of States to promote and protect all human rights and fundamental freedoms, regardless of their political, economic and cultural systems.

All States have ratified at least one of the core human rights treaties (see box on p.6), which creates legal obligations to ensure the rights contained within the treaties and protected and enforced. Some fundamental human rights norms enjoy universal protection by customary international law across all boundaries and civilizations.

### A Brief History of Human Rights

539BC: Cyrus Cylinder frees slaves and establishes freedom of religion in Babylon

1215: Magna Carta signed, established a charter of liberties in England

1789: French Declaration of the Rights of Man and of the Citizen

1945: Establishment of the United Nations

1948: Universal Declaration of Human Rights

1966: International Covenant on Civil and Political Rights and International Covenant on Economic, Social and Cultural Rights adopted by the UN

<sup>1</sup> Information in this section taken from <http://www.ohchr.org/en/issues/pages/whatarehumanrights.aspx> and [http://www.unicef.org/crc/index\\_30207.html](http://www.unicef.org/crc/index_30207.html)



Human rights are inalienable. They should not be taken away, except in specific situations and according to due process. For example, the right to liberty may be restricted if a person is found guilty of a crime by a court of law.

### Interdependent and indivisible

All human rights are indivisible, whether they are civil and political rights, such as the right to life, equality before the law and freedom of expression; economic, social and cultural rights, such as the rights to work, social security and education, or collective rights, such as the rights to development and self-determination, are indivisible, interrelated and interdependent. This means that by improving the protection or enjoyment of one right, other rights will also be improved. Likewise, the deprivation of one right adversely affects the others.

### Equal and non-discriminatory

Non-discrimination is a cross-cutting principle in international human rights law. The principle is present in all the major human rights treaties and provides the central theme of some of international human rights conventions such as the International Convention on the Elimination of All Forms of Racial Discrimination and the Convention on the Elimination of All Forms of Discrimination against Women.

The principle applies to everyone in relation to all human rights and freedoms and it prohibits discrimination on the basis of a list of non-exhaustive categories such as sex, race, colour and so on. The principle of non-discrimination is complemented by the principle of equality, as stated in Article 1 of the Universal Declaration of Human Rights: “All human beings are born free and equal in dignity and rights.”



### Both Rights and Obligations

Human rights entail both rights and obligations. States assume obligations and duties under international law to respect, to protect and to fulfil human rights. The obligation to respect means that States must refrain from interfering with or curtailing the enjoyment of human rights. The obligation to protect requires States to protect individuals and groups against human rights abuses. The obligation to fulfil means that States must take positive action to facilitate the enjoyment of basic human rights. At the individual level, whilst we are entitled our human rights, we should also respect the human rights of others.

### Becoming a party to a Human Rights Treaty

International human rights treaties are developed by a process of negotiation among United Nations Member States to produce a commonly acceptable set of standards. Individual States then decide for themselves whether to be legally bound by the treaty. There are two ways for a State to become a party to a Convention: by signature and ratification or by accession. Both of these acts signify an agreement to be legally bound by the terms of the Convention.

The Optional Protocols to a Convention are considered independently of the Convention and must be ratified or acceded to separately, but the process is the same. States do not need to be a party to the Convention in order to ratify or accede to Optional Protocols.

### Core Human Rights Instruments

There are ten 'core' human rights instruments and their respective treaty bodies which set out the fundamental human rights to be enjoyed by all global citizens:

- ☐ International Covenant on Civil and Political Rights
- ☐ International Covenant on Economic, Social and Cultural Rights
- ☐ International Convention on the Elimination of All Forms of Racial Discrimination
- ☐ Convention on the Rights of the Child
- ☐ Convention on the Elimination of all forms of Discrimination Against Women
- ☐ Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment
- ☐ Convention on the Rights of Persons with Disabilities
- ☐ International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families
- ☐ International Convention for the Protection of All Persons from Enforced Disappearance
- ☐ Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment

**Signature:** Signature constitutes a preliminary endorsement of the Convention or Protocol. Signing the instrument does not create a binding legal obligation but does demonstrate the State's intent to examine the treaty domestically and consider ratifying it. Although signing does not commit a State to ratification, it does oblige the State to refrain from acts that would defeat or undermine the treaty's objective and purpose.

Once a State has signed a Convention it may be the role of the NHRI to prepare a report on how the obligations would be implemented into national legislation, policies and practice. The Advisory Council would have an integral role in the drafting of this report.

**Ratification or Accession:** Ratification or accession signifies an agreement to be legally bound by the terms of the Convention. Though accession has the same legal effect as ratification, the procedures differ. In the case of ratification, the State first signs and then ratifies the treaty. The procedure for accession has only one step—it is not preceded by an act of signature.

The formal procedures for ratification or accession vary according to the national legislative requirements of the State. Prior to ratification or accession, a country normally reviews the treaty to determine whether national laws are consistent with its provisions and to consider the most appropriate means of promoting compliance with the treaty. The NHRI may be asked by the State to help prepare this review and make recommendations.

Most commonly, countries that are promoting the Convention sign shortly after it has been adopted. They then ratify the treaty when all of their domestically required legal procedures have been fulfilled. Other States may begin with the domestic approval process and accede to the treaty once their domestic procedures have been completed, without signing the treaty first.

Both ratification and accession involve two steps. First, the appropriate national organ of the country—Parliament, Senate, the Crown, Head of State or Government, or a combination of these—follows domestic constitutional procedures and makes a formal decision to be a party to the treaty. Second, the instrument of ratification or accession, a formal sealed letter referring to the decision and signed by the State's responsible authority, is prepared and deposited with the United Nations Secretary-General in New York.

## Human Rights in Samoa

Human rights are enshrined in Samoan law by;

- 1) The Constitution
- 2) International human rights instruments
- 3) International customary law

## Human Rights in the Constitution

The Constitution of Samoa provides for the protection of fundamental human rights, covering;

- Right to life (section 5)
- Right to personal liberty (section 6)
- Freedom from inhuman treatment (section 7)
- Freedom from forced labour (section 8)
- Right to fair trial and due process (sections 9,10)
- Freedom of religion (sections 11,12)
- Rights regarding freedom of speech, assembly, association, movement and residence (section 13)
- Property rights (section 14)
- Freedom from discriminatory legislation (section 15)

## International Human Rights Instruments

Samoa has become party to a number of international human rights instruments which provide for the protection of specific human rights. The conventions to which Samoa is party are;

- Convention on the Elimination of Discrimination Against Women
- Convention on the Rights of the Child
- Discrimination (Employment and Occupation) Convention 1958 (No. 111)
- International Covenant on Civil and Political Rights



### International Customary Law

International customary law is a body of law that arises from international customs that become widely accepted and ultimately enforceable. This body of law is considered by the United Nations to be one of the primary sources of International Law and encompasses many aspects of human rights protection.

The exact definition of customary law is strongly disputed and the principles it encompasses vary from jurisdiction to jurisdiction. Enforcement can therefore be problematic but never discounted.

Human rights international customary law is evolving all the time and there is no clear definition of its scope. For example, prior to 1945 a government would not be deemed to have violated international law by the mass murder of its own citizens in its own territory. Josef Stalin's purges of the 1930s resulted in the deaths of over twenty million Russian citizens—history's worst genocide. The international community hardly noticed that it was happening. International lawyers of the time believed that what Stalin did was within the sovereignty of the Soviet Union, it was a matter of "domestic jurisdiction," it was "their business." Less than a decade later events in Nazi Germany led to a reappraisal of this view and resulted in the Nuremberg Trials, where it was established that genocide was an international crime.

International customary law can now be said to afford protection against torture, genocide and slavery, as well as enforcing principles of non-discrimination. However, for some, customary international law goes much further and covers a wide range of human rights. A key question relating to international customary law is who enforces it? If the State is in contravention of International Customary Law it is very difficult for the International community to intervene. In these circumstances the role of the NHRI is critical in raising awareness of the issues and making recommendations directly to Government.

In relation to the Advisory Council, the principles of this body of law are instructive – human rights are about protecting the dignity of the person and ensuring the conditions exist for every person to live in peace and enjoy minimum standards for a reasonable quality of life.

The Constitution of Samoa, and the International instruments to which Samoa is party, afford certain human rights protections. However, the Council members should not limit their concern to the principles contained within these documents. If it is aware of violations of any nature that impede a person's ability to lead a dignified life then it should be brought to the attention of the Council. The role of the NHRI is to help protect and promote equality, human dignity and compassion. There should be no arbitrary limits to the breadth of its jurisdiction within Samoa.

### Fa'a Samoa

A common misconception is that the concept of human rights is a Western construct. Samoa is a society built on a foundation of respect and human dignity, vastly preceding the very first international human rights convention. This misconception is compounded by the belief that human rights are individual rights and that this threatens the collective focus of Fa'a Samoa.

One of the main challenges for the NHRI is to reconcile Fa'a Samoa and the international system of human rights protection. Rather than this as a hurdle, the two concepts can be viewed as complementary and mutually reinforcing. International human rights provides for a wide range of collective and cultural rights and if used properly, will help to reinforce Fa'a Samoa and individual rights in the rapidly changing modern day environment.

Council members should approach all of their work with consideration for Fa'a Samoa and the cultural context within which the NHRI operates. Drawing upon the strong foundation from which this country originates from will enable the most effective use of modern day principles of human rights protection and promotion.

## The role of a National Human Rights Institution

### What is an NHRI?

An NHRI is an independent mechanism of national human rights protection and promotion. It is established either by the Constitution of a country or through legislation – in the case of Samoa, the Ombudsman Act 2013.

It has a distinct personality that distinguishes it from other mechanisms of human rights protection and promotion, such as political action, Non-Governmental Organisations, legal institutions or national human rights action plans.

It has wide-ranging powers to protect and promote human rights at a national level and plays an important role in linking the International Human Rights instruments to the local level.

The mandate of the Office of the Ombudsman as the NHRI for Samoa is laid out in the Ombudsman Act 2013 and can be found in full on page 18.

It is important to remember that the primary responsibility to promote and protect human rights rests with States; establishing an NHRI is an important instrument in achieving this. NHRIs are central elements of national human rights protection systems: they work hand in hand with other parts of the State and with civil society actors.

NHRIs can provide a central role in building a culture of human rights, whilst reinforcing the rule of law. They are directly engaged in work related to civil and political rights as well as economic, social and cultural rights.

### Models of NHRIs

Broadly speaking there are two different models of NHRI:

- 1) Human Rights Commission
- 2) Dual-functioning Office of the Ombudsman

#### History of NHRIs

1940: NHRIs endorsed by the United Nations

1970s: First UN International Conference

1970s: First NHRIs established in late 1970s and early 1980s

1991: First international meeting of NHRIs and Paris Principles established

1993: Vienna Second World Conference on Human Rights

2006: NHRIs granted full status in UN Human Rights Council

2014: 107 NHRIs worldwide, of

Human Rights Commissions are traditionally multi-member commissions and often have separate teams to investigate particular areas of human rights. The Ombudsman model is used when the need and resources are less and it is headed up by a single person.

The form of the NHRI is only important in that it reflects the need and resources of the country. The Ombudsman model was chosen for Samoa and the NHRI was subsequently created by rewriting the Ombudsman Act 1988 to include a human rights mandate. The result – the Ombudsman Act 2013.

There are a number of benefits to the Office of a dual-function Ombudsman model. Aside from a sharing of costs (which is indeed of great benefit to Samoa), it allows the NHRI to operate within an Office of already established reputation. The Office of the Ombudsman already has a strong relationship with the Government and has worked to create a public awareness of its functions. This can be utilised to great effect for the work of the NHRI.

One of the disadvantages to this model is linked to the need for an NHRI to be pluralistic (for more, see below) – i.e. representative of Samoan society. Pluralism of the Office ensures that minority and vulnerable groups are represented, their views heard and issues facing them raised.

The Advisory Council is the solution to the potential lack of pluralism for the dual-function model NHRI. Its members provide these links to Samoan society and they are responsible for ensuring that everyone in the country has a voice within the NHRI. The Advisory Council will also seek to ensure gender parity in its composition. Gender equality cross-cuts all strategic priorities of the NHRI, with the aim of helping to foster full enjoyment of rights for both men and women. The NHRI is committed to gender equality in Samoa in recognition of the absolute necessity for truly sustainable development and enjoyment of rights to be achieved. The Advisory Council should always consider gender equality in the course of all its work.

### The role of an NHRI

The role and functions of an NHRI can be broadly summarised as:

#### 1) The promotion of human rights

The promotion of human rights within Samoa is a core function of the NHRI. By creating a national culture of human rights, instances of human rights violations will be prevented and a platform established for sustainable development and effective

### NHRI Features & Functions

- ☐ Responsible for the domestic application and implementation of human rights
- ☐ Work on the basis of international human rights standards
- ☐ Are established by law: State institutions
- ☐ Are subject to limitations in the law
- ☐ Are independent
- ☐ Should comply with the Paris Principles

democracy.

NHRIs around the world have employed a variety of innovative methods to promote human rights in their respective jurisdictions and it is the role of the Office of the Ombudsman to introduce education initiatives that draw from their experiences and are adapted to the Samoan cultural context. Examples of possible human rights promotional activities may include:

- Publishing human rights education materials for inclusion in the school curriculum
- Hosting mock UN forums for Samoan youth
- Public education through awareness campaigns
- Community based events
- Establishing human rights education sessions for Government Ministries

## 2) The protection of human rights

The second core function of any NHRI is to help identify and investigate human rights abuses, bringing those responsible to justice and providing remedies for victims.

This could be achieved through:

- Investigations into thematic areas of human rights violations (E.g. Gender-based violence)
- Public Inquiries
- Inspecting places of involuntary detention
- Monitoring
- Receiving and resolving individual complaints

**\*\*Please note that initially this will not be a function of the Samoan NHRI. Individual complaints will still be received but as yet the Ombudsman Act 2013 does not afford a mandate to investigate. However, if a complaint suggests a widespread or thematic violation of human rights the Ombudsman may decide to initiate an investigation. Further, if the complaint can be investigated under the Ombudsman's traditional role of upholding good governance, then it shall.\*\***

With regard to the protection (and promotion, to a lesser degree) of human rights it is the role of the NHRI to focus their efforts on where the need is greatest. This involves undertaking an analysis of human rights issues in Samoa, the severity of the potential violations and the number of people affected. It is the role of the Advisory Council to help in this task.

### 3) Advising the Government and Parliament

According to the Paris Principles, NHRIs have a general responsibility to advise Government, parliament and other authorities by giving “opinions, recommendations, proposals and reports”.

The Paris Principles state that NHRIs may give advice either on request or on their own initiative without “higher referral”. They must be free to publicise their advice without constraint and appropriate immunities. This advice provides a vital and current source of policy and legal information on a range of human rights issues. NHRIs can foster dialogue and facilitate cooperation with Governments and parliament: these are all important in creating a strong culture of human rights in the country.

A specific and important part of this advice concerns the ratification of international instruments, the removal of reservations and the incorporation of rights into domestic legislation.<sup>2</sup>

### 4) Monitoring human rights

The monitoring of human rights is a key function of the NHRI and although it could be classified under the ‘protection’ role it is worth exploring in its own right.

One of the key responsibilities of the NHRI in Samoa is to produce an annual report on the state of human rights in the country. This will examine how Samoa is performing against a range of indicators relating to the core human rights conventions.

The purpose of this report is to highlight where progress has been made, identify areas for improvement and make direct recommendations to Government for improvements.

The NHRI will monitor a range of human rights indicators throughout the year as part of the state of human rights report and this will also help to identify at an early stage any trends of human rights violations.

### 5) Coordination and cooperation

The Paris Principles also state that an NHRI should coordinate and cooperate with a variety of human rights protection mechanisms including;

- Other NHRIs
- Government
- National and international NGOs
- Human rights defenders

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<sup>2</sup> OHCHR, ‘National Human Rights Institutions – History, Principles, Roles and Responsibilities’, p.30 (United Nations Publication HR/P/PT/4/Rev.1)

The purpose of the coordination and cooperation role is to share information and learning, exchange examples of best practice and explore potential joint projects. The NHRI in Samoa has already taken significant steps in establishing contacts within other NHRIs and the Advisory Council will play a big role in advancing this function within Samoa and further afield.

### The Paris Principles

The Paris Principles were established at the first meeting of NHRIs in 1991 and are a set of *minimum standards* for all NHRIs. This set of standards is used by the International Coordinating Committee (ICC) to assess whether an NHRI should be given accreditation as a properly functioning mechanism of human rights protection and promotion (see section below for further information on the ICC and accreditation).

Under the Paris Principles, NHRIs are required to:

- **Protect** human rights, including by receiving, investigating and resolving complaints, mediating conflicts and monitoring activities; and
- **Promote** human rights, through education, outreach, the media, publications, training and capacity building, as well as by advising and assisting Governments.

The Paris Principles set out what a fully functioning NHRI is and identify six main criteria that these institutions should meet to be successful:

- **Mandate and competence:** a broad mandate based on universal human rights standards;
- **Autonomy from Government;**
- **Independence** guaranteed by statute or constitution;
- **Pluralism**, including through membership and/or effective cooperation;
- **Adequate resources**
- **Adequate powers of investigation.**

The NHRI of Samoa satisfies many of these main criteria by way of the powers mandated to it in the Ombudsman Act 2013. The legislation was drafted with the Paris Principles in mind and accordingly affords a broad mandate to protect and promote human rights, guarantees autonomy and independence, requires Government to provide adequate resources and grants wide ranging powers of investigation.

The Advisory Council is the organ of the NHRI that helps to satisfy the pluralism criteria and this is always worth bearing in mind when considering your responsibilities as a Council member.

## The International Coordinating Committee and NHRI Accreditation

The International Coordinating Committee of National Human Rights Institutions for the Promotion and Protection of Human Rights was originally established by NHRIs at their International Conference in Tunis in 1993.

It coordinates the activities of Paris Principle-compliant NHRIs and acts as the accrediting authority for all NHRIs. It provides support for those NHRIs who are under threat, encourages cooperation and helps facilitate capacity building exercises.

Accreditation is the official recognition that NHRIs meet or continue to fully comply with the Paris Principles. There are currently three levels of accreditation:

- **“A”** Voting member: complies fully with the Paris Principles
- **“B”** Observer member: does not fully comply with the Paris Principles or has not yet submitted sufficient documentation to make that determination
- **“C”** Non-member: does not comply with the Paris Principles

**“A” status** institutions demonstrate compliance with the Paris Principles. They can participate fully in the international and regional work and meetings of national institutions, as voting members, and they can hold office in the Bureau of the International Coordinating Committee or any sub-committee the Bureau establishes. They are also able to participate in sessions of the Human Rights Council and take the floor under any agenda item, submit documentation and take up separate seating.

**“B” status** institutions may participate as observers in the international and regional work and meetings of national institutions. They cannot vote or hold office within the Bureau or its sub-committees. They are not given NHRIs badges, nor may they take the floor under agenda items and submit documentation to the Human Rights Council.

**“C” status** institutions have no rights or privileges with the International Coordinating Committee or in United Nations rights forums. They may, at the invitation of the Chair of the Bureau, attend meetings of the International Coordinating Committee.<sup>3</sup>

Newly established NHRIs cannot apply for accreditation until they have been operating in compliance with the Paris Principles for one year. The Samoa NHRI aims to achieve ‘A’ accreditation immediately and retain it thereafter. One of the roles of the Advisory Council will be to provide feedback on the accreditation applications and subsequent renewals.

## Advantages of NHRIs

National human rights institutions enable States to meet their international responsibility “to take all appropriate action” to ensure that international obligations are implemented at the national level.

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<sup>3</sup> Ibid, p44



National human rights institutions receive their authority from the State: this official capacity lends them legitimacy and powers that are particular to statutory institutions, although legitimacy can be squandered through ineffectiveness and failure to meet international standards. National human rights institutions may have access to the Government and policymakers, and their recommendations are usually heard, even if they are not always acted upon.

Clearly, Governments bear the prime responsibility for human rights, but they cannot always find a neutral space in which to interact and exchange ideas with other actors, especially civil society. In fact, the two are, regrettably, often seen at opposing sides of the human rights debate. As independent entities, but established by the Government, NHRIs occupy a unique terrain, one that can link civil society to the Government. Providing a neutral meeting point and focal point for human rights encourages dialogue and facilitates cooperation. Because NHRIs do not have a defined constituency or vested interest other than the public interest, they are ideally placed to provide a balanced message on the rights people should enjoy.<sup>4</sup>

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<sup>4</sup> Ibid p.20

## Human Rights Mandate of the Office

The Ombudsman Act 2013 is the enabling legislation for the National Human Rights Institution of Samoa and provides a mandate for the Office of the Ombudsman to protect and promote human rights. The mandate in full:

**s33. Functions** – The Ombudsman has the following human rights functions:

- (a) to promote public awareness of human rights and efforts to combat all forms of discrimination or corruption through the provision of information and education;
- (b) to inquire into, and report on, alleged violations of human rights;
- (c) to monitor and promote compliance with international and domestic human rights law including through any of the following—
  - (i) making recommendations as to the desirability of Samoa becoming a party to an international human rights instrument;
  - (ii) reviewing existing and proposed legislation or reviewing other laws for consistency with international human rights law and recommending additional legislative and other measures to protect human rights;
  - (iii) advising the Government on its reporting obligations under international human rights instruments and on the content of those reports;
  - (iv) providing information to the international human rights system, including the Human Rights Council and its mechanisms and the human rights treaty monitoring bodies;
- (d) with the approval of a court, to participate in judicial proceedings as a friend of the court or as a party where human rights issues arise; or
- (e) to visit all public and, subject to section 48, private places of voluntary and involuntary confinement or detention;
- (f) to consult, engage and cooperate with relevant civil society organisations, including business and labour organisations, ethnic and minority organisations, and academic institutions, as the Ombudsman considers appropriate;
- (g) to consult, engage and cooperate with other national, regional and international human rights bodies as the Ombudsman considers appropriate;
- (h) to advise on any matter referred to the Ombudsman by the Government, having regards to the available resources and priorities of the Ombudsman;
- (i) to produce and publicise reports on any of the functions in this section;
- (j) to do anything incidental or conducive to the performance of any of the functions in this section or carry out any other human rights function under this Act.

**34. Initiating inquiries** – If the Ombudsman becomes aware of widespread, systemic or entrenched situations or practices that violate human rights, the Ombudsman may initiate an inquiry.

**35. No inquiry on matters before the courts** – The Ombudsman may not inquire into a matter that is the subject of any proceedings pending in any court, unless the court proceedings have been unreasonably delayed and are invited to do so under section 33(d).

**36. Inquiry reports** – (1) If an inquiry finds evidence of human rights violations, the report may include any or all of the following:

- (a) a determination that a violation of human rights has occurred and should not be repeated or continued;
- (b) a recommendation that a person should perform reasonable acts to redress the violation of human rights; and
- (c) a recommendation that victims of violations are entitled to compensation for any loss or damage suffered;
- (d) a recommendation for action to any person and require the person to report to the Ombudsman on the steps that the person has taken to give effect to the recommendations.

(2) The Ombudsman shall:

- (a) make public the report, findings and recommendations; and
- (b) provide Parliament with a copy of the report, findings and recommendations.

(3) The Speaker shall cause the report to be tabled in Parliament pursuant to its Standing Orders for debate or referral to the relevant parliamentary committee.

**37. Parliamentary scrutiny** – (1) The parliamentary committee must scrutinise the report referred to it under section 36(3) under the Standing Orders and may require the Government or other persons to make formal responses to the report.

(2) The parliamentary committee must table its report, including any formal response, in Parliament for debate at its current or next meeting pursuant to its Standing Orders.

### *Division 3 – Other matters*

**38. Complaints** – (1) The Ombudsman may receive oral or written complaints about breach of human rights.

(2) The Ombudsman may not investigate any individual complaints relating to human rights violations but the complaints may form the basis for conducting an inquiry under Division 2.

(3) With the written consent of the complainant, the Ombudsman may refer the complaint to the authority responsible for handling the complaint.

**39. Advisory groups and experts** – The Ombudsman may establish advisory groups or appoint an expert or a group of experts for the purpose of this Part pursuant to terms the Ombudsman considers appropriate.

**40. State of human rights report** – (1) The Ombudsman must, before 30 June in each year:

- (a) prepare a report on the status of human rights in Samoa for the previous year, including the following—
  - (i) recommendations about reforms and other measures, whether legal, political or administrative, which could be taken to prevent or redress human rights violations;
  - (ii) any action taken by the Government on recommendations in any previous report;
  - (iii) any action taken by the Government to promote and protect human rights; and
- (b) submit the report to the Speaker for tabling in the Legislative Assembly under its Standing Orders at its next meeting.

(2) When the report is tabled, the Legislative Assembly must refer the report to the parliamentary committee responsible for human rights to scrutinise the report pursuant to the Standing Orders.

(3) The parliamentary committee must:

- (a) summon a Minister, public servant or other person affected by the report to appear before it to respond to any matter in the report; and
- (b) prepare and transmit its report and recommendations to the Legislative Assembly to debate the report and the state of human rights in Samoa.

## Advisory Council Terms of Reference

The Advisory Council of the Office of the Ombudsman/NHRI, Samoa is hereby established pursuant to section 39 of the Ombudsman (Komesina o Sulufaiga) Act 2013. The Advisory Council is mandated to assist the Office of the Ombudsman (“Office”) to promote and protect human rights in Samoa.

1. The Advisory Council consists of a body of knowledgeable individuals, which is reflective of diverse constituent groups in Samoan society, to ensure individuals are fairly heard and represented.
2. The Council will have the following functions:
  - a) Assist the Office in enlarging its knowledge and awareness of human rights issues in Samoa;
  - b) Assist the Office in the promotion of awareness, appreciation and protection of human rights in Samoa;
  - c) Advice on matters referred by the Ombudsman;
  - d) Raise issues concerning the observance and violations of human rights; and
  - e) Reflect and comment on Human Rights Reports prepared by the Office.
3. Membership on the Council is not a salaried position, however, sitting allowances will be provided.
4. The Advisory Council is not intended to be a forum for:
  - a) Pursuing the agenda of individual organisations; or
  - b) Impeding the Office of the Ombudsman in its work.
5. Council members will serve for a 3 year term, and may be re-appointed subject to satisfactory performance.
6. Council members are expected to be people:
  - a) Of good character and integrity;
  - b) Who have not been convicted of a felony or misdemeanor by a court of competent jurisdiction or by a professional disciplinary board for charges related to fraud or misuse of office/authority;
  - c) Who are independent and not consider the membership in the ANCHRI a representation of any political party or other organisation, and to perform his/her duties in an objective and professional manner; and
  - d) Who act in the best interests of the protection and promotion of human rights.
7. The Advisory Council will meet every quarter, unless otherwise required by the Ombudsman.

8. Council members will forfeit membership if:
  - a) They fail to attend 2 meetings without good reason; or
  - b) Do not participate in any of the tasks required of the Council.
9. The meetings of the Advisory Council will be chaired by the Assistant Ombudsman, who will be assisted by one other staff member.
10. Minutes of the Advisory Council will be circulated to all staff and Council members following each meeting.
11. Two weeks before each Advisory Council meeting members must be circulated minutes of the previous meetings, the agenda for the next meeting and any other documents that require their consideration.
12. Council members will observe office policy on discretion and confidentiality with respect to all meetings, and any matters that arise in their role, including media and publicity.

## Description of Duties

This section is intended to engender a greater understanding of your role as Advisory Council members, providing examples and outlining working procedures of the group.

### The functions of the Council

1) Assist the Office in enlarging its knowledge and awareness of human rights issues in Samoa;

The quality of the work of the NHRI will largely depend on its understanding of the human rights issues that exist in Samoa. It is therefore your responsibility as Council members to assist the Office in the development of its knowledge and awareness of human rights issues in Samoa.

The section below (p.26) provides you with a template reporting form to be used for all functions of the Council. If the matter is of a non-urgent nature then you may wait to present it at the next Advisory Council meeting. If the issue is one relating to a serious violation of human rights then please immediately send it to the Office of the Ombudsman using the contact details at the end of this booklet.

Examples of issues under this function that should be brought before the Council using the template reporting form:

- Media reports relating to human rights issues (this will help the NHRI develop an understanding of how human rights are perceived in Samoa and identify areas of priority)
- Human rights issues or initiatives in the Pacific region (or wider) that may be of relevance and of educational value to the Office of the Ombudsman
- Training courses that may be of use to the Office or Advisory Council
- Human rights work being undertaken by other organizations

2) Assist the Office in the promotion of awareness, appreciation and protection of human rights in Samoa;

#### Advisory Council Media & Publicity Guidelines

- ☐ Council members are expected to treat all NHRI work as confidential unless it has already been made public by the Office of the Ombudsman
- ☐ If Council members would like to provide the media with a quote on work undertaken by the NHRI you must first be authorised to do so by the Office of the Ombudsman
- ☐ Any public appearances or mentions in the media where membership of the Advisory Council is mentioned must be authorised in advance by the Office of the Ombudsman
- ☐ Advisory Council members must not use their position to further personal agendas

The Advisory Council members should play an active role in helping to create a national understanding and consciousness of human rights, where both the rights of the individual and collective are respected.

One of the major challenges facing the NHRI of Samoa is reconciling the international standards of human rights with the Fa'a Samoa and this is a consideration that must be at the forefront of the minds of the Advisory Council members in the course of promoting awareness, appreciation and protection of human rights in Samoa.

To undertake the role of awareness raising the Council Members are encouraged to:

- Educate personal networks on human rights issues and encourage involvement in human rights initiatives
- Use the template reporting form to highlight human rights promotion or education initiatives in the Pacific region (or wider) that may be of relevance and of educational value to the Office of the Ombudsman
- Use the template reporting form to suggest ideas for promoting human rights in Samoa
- Use the template reporting form to suggest ideas for human rights promotion initiatives based around the Fa'a Samoa
- Provide feedback on human rights awareness raising and education initiatives of the NHRI

### 3) Advice on matters referred by the Ombudsman;

The Ombudsman Act 2013 mandates the Office of the Ombudsman with three different areas of responsibility;

- i. Good Governance – investigating complaints against public agencies, initiating own motion investigations of potential maladministration and raising public awareness of good governance
- ii. Human Rights – protecting and promoting human rights in Samoa, as discussed above
- iii. Special Investigations – investigating complaints against police, prison and other prescribed forces officers

The Ombudsman may, at his discretion, seek the advice of the Advisory Council on any matter within the jurisdiction of the Ombudsman Act 2013.

### 4) Raise issues concerning the observance and violations of human rights;



The role of the NHRI to protect human rights in Samoa can only be undertaken effectively if it is able to prioritise issues based on a deep understanding of the violations occurring. It is a major role of the Advisory Council to bring to the attention of the NHRI:

- Individual cases of human rights violations
- Thematic areas of human rights violations (for instance evidence of widespread gender based violence or widespread discrimination against people with disabilities)
- Human rights issues facing minority or vulnerable groups

#### 5) Reflect and comment on Human Rights Reports prepared by the Office

The NHRI is mandated to produce human rights reports on a range of issues, including:

- The state of human rights in Samoa (annually)
- Investigations undertaken on thematic areas of human rights violations
- Incorporating additional International human rights conventions
- National inquiries undertaken
- Inspections of places of involuntary detention

The Ombudsman may request the reflection and comments on any reports produced by the NHRI. On such occasions, the report will be circulated to all Advisory Council members and a timeframe allocated for review and comments. It will be the duty of all members to provide comments when requested.

#### Violation Severity

When reporting instances of human rights violation to the NHRI (using the template reporting form) you are asked to indicate the severity of the violation, using a scale of 1-10. This is intended to help the NHRI better monitor human rights violations and direct their focus accordingly. In rating the violation severity, consider:

- The number of people affected
- How severely it affects their quality of life
- Whether the violation is ongoing or a one off

Template Human Rights Issue Reporting Form

Council Member Name	
Title/Brief Description (max 150 characters)	
Detailed Description (use additional paper if required)	

Area of Responsibility (please tick all that apply)	<input type="checkbox"/> Human Rights knowledge or awareness <input type="checkbox"/> Human rights violation <input type="checkbox"/> Human rights office report <input type="checkbox"/> Advice requested by Ombudsman <input type="checkbox"/> Other (please state) .....
Area of Human Rights	<input type="checkbox"/> International Covenant on Civil and Political Rights <input type="checkbox"/> International Covenant on Economic, Social and Cultural Rights <input type="checkbox"/> International Convention on the Elimination of All Forms of Racial Discrimination <input type="checkbox"/> Convention on the Rights of the Child <input type="checkbox"/> Convention on the Elimination of all forms of Discrimination Against Women <input type="checkbox"/> Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment <input type="checkbox"/> Convention on the Rights of Persons with Disabilities <input type="checkbox"/> International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families <input type="checkbox"/> International Convention for the Protection of All Persons from Enforced Disappearance <input type="checkbox"/> Other (please state) <input type="checkbox"/> .....
Estimated Number of People Affected	
Severity of Violation (1-10)	

## Quarterly Meeting Protocol

The quarterly meetings of the Advisory Council are the main focal point for Council activities. The following protocol shall be observed for all quarterly meetings:

- |                    |   |
|--------------------|---|
| 1 month before:    | Council members to be notified of the date of the next quarterly meeting. Agenda items to be submitted to the NHRI, using the contact details in this handbook and the template reporting form. |
| 2 weeks before:    | A reminder of the quarterly meeting sent to all Council members, including previous meeting minutes and agenda for forthcoming meeting.   |
| Quarterly Meeting: | Chaired by the Assistant Ombudsman or delegated officer from the Office of the Ombudsman. Meeting minutes taken by the Office of the Ombudsman. Attendance sheet signed by all attendees.       |
| 1 week after:      | Meeting minutes distributed. 2 weeks afforded for comments and corrections.   |
| 2 weeks after:     | Sitting allowances available for collection from Ministry of Finance, Level 2, Central Bank. Uncollected sitting allowances will be brought to the next quarterly meeting.                      |

### General information:

- Past meeting minutes can be requested at any time using the contact details in this handbook
- Council members will forfeit membership if they fail to attend two quarterly meetings
- Feedback on reports or work of the NHRI may be sought from Council members outside of the quarterly meetings where necessary. When this occurs a time frame will be allocated for submission of responses.
- Upon resignation of a Council Member nominations will be requested prior to the next quarterly meeting and an appointment made by the Ombudsman if a suitable candidate is found.

## Advisory Council Member Details & Agreement

Please complete this section of the handbook and retain for your records once a copy has been obtained by the Office of the Ombudsman

Full Name:		
Address:		
Email Address:		
Contact Phone Number:		
I confirm that I have read and understood the contents of this handbook and agree to abide by the Terms of Reference and description of duties as a member of the Advisory Council	Signature	Date

## Contact Information

Your point of contact within the Office of the Ombudsman is Hai-Yuean Tualima, Human Rights and Good Governance Manager, who can be contacted on:

Email: [hai.yuean.tualima@ombudsman.gov.ws](mailto:hai.yuean.tualima@ombudsman.gov.ws) or [info@ombudsman.gov.ws](mailto:info@ombudsman.gov.ws)

Phone: +685 25394

Fax: +685 21862

## Further Reading

<a href="http://www.ombudsman.gov.ws">http://www.ombudsman.gov.ws</a>	Office of the Ombudsman website – containing latest news, the Ombudsman Act 2013 and publications
<a href="http://www.ohchr.org/EN/ProfessionalInterest/Pages/CoreInstruments.aspx">http://www.ohchr.org/EN/ProfessionalInterest/Pages/CoreInstruments.aspx</a>	Text of all core human rights conventions
<a href="http://www.ohchr.org/EN/UDHR/Pages/UDHRIndex.aspx">http://www.ohchr.org/EN/UDHR/Pages/UDHRIndex.aspx</a>	The Universal Declaration of Human Rights
<a href="http://www.ohchr.org/Documents/Publications/PTS-4Rev1-NHRI_en.pdf">http://www.ohchr.org/Documents/Publications/PTS-4Rev1-NHRI_en.pdf</a>	‘The United Nations Human Rights System and National Human Rights Institutions’ – OHCHR Publication
<a href="http://www.ohchr.org/EN/Issues/Pages/TraditionalValues.aspx">http://www.ohchr.org/EN/Issues/Pages/TraditionalValues.aspx</a>	Human Rights and Traditional Values
<a href="https://www.humanrights.gov.au/education/human-rights-explained-index">https://www.humanrights.gov.au/education/human-rights-explained-index</a>	Human Rights Explained Fact Sheets – Australian Human Rights Commission Publication
<a href="http://www.ohchr.org/EN/HRBodies/UPR/PAGES/WSSession11.aspx">http://www.ohchr.org/EN/HRBodies/UPR/PAGES/WSSession11.aspx</a>	Samoa’s Universal Periodic Review
<a href="http://www.humanrights.com/what-are-human-rights/brief-history/cyrus-cylinder.html">http://www.humanrights.com/what-are-human-rights/brief-history/cyrus-cylinder.html</a>	A Brief History of Human Rights

The Office of the Ombudsman has a collection of literature on the protection and promotion of human rights. Advisory Council members are entitled to borrow or browse these books for the purposes of their role within the NHRI. Please use the contact details above to make arrangements for their use.