



OFFICE OF THE OMBUDSMAN
NATIONAL HUMAN RIGHTS INSTITUTION OF SAMOA



**OVERVIEW:
NATIONAL PUBLIC INQUIRY
INTO FAMILY VIOLENCE**



**CLIMATE CHANGE AND
HUMAN RIGHTS**

**STATE OF HUMAN RIGHTS REPORT
2017**

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GLOSSARY

CASH	Climate Adaptation Strategy for Health
CAT	Convention Against Torture
CED	Convention for the Protection of All Persons from Enforced Disappearance
CEDAW	Committee on the Convention on the Elimination of Discrimination against Women
CERD	International Convention on the Elimination of All Forms of Racial Discrimination
CIM	Coastal Infrastructure Management
CMW	International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families
CRC	Convention on the Rights of the Child
CRPD	Convention on the Rights of Persons with Disabilities
CSIRO	Commonwealth Scientific and Industrial Research Organization
DHS	Demographic and Health Survey
DMO	Disaster Management Office
DVU	Domestic Violence Unit
EEZ	Exclusive Economic Zone
EPC	Electric Power Corporation
EWACC	Economy-wide integration to climate change adaptation and disaster risk management and reduction to reduce climate vulnerability of communities
GEF	Global Environment Facility
GoS	Government of Samoa
ICCPR	International Covenant on Civil and Political Rights
ICESCR	International Covenant on Economic, Social and Cultural Rights
MAF	Ministry of Agriculture and Fisheries
MFAT	Ministry of Foreign Affairs and Trade
MNRE	Ministry of Natural Resources and Environment
MoH	Ministry of Health
MoP	Ministry of Police
MWCSD	Ministry of Women, Community and Social Development
MWTI	Ministry of Works, Infrastructure and Transportation
NAPA	National Adaptation Programme of Action
NCD	Non-communicable disease
NDRMS	National Disaster Risk Management Strategy
NGO	Non-Government Organisation
NHRI	National Human Rights Institution
NOLA	Nuanua o le Alofa
PDNA	Post Disaster Needs Assessments
OHCHR	Office of the High Commissioner for Human Rights
SHRR	State of Human Rights Report
SIDS	Small island developing state
SUNGO	Samoa Umbrella for Non-Government Organisation Inc.
SVSG	Samoa Victim Support Group
UDHR	Universal Declaration of Human Rights
UN	United Nations
UNFCCC	UN Framework Convention on Climate Change
UNDP	United Nations Development Programme
UNICEF	United Nations Children's Fund
UNFPA	United Nations Population Fund
UN Women	United Nations Entity for Gender Equality and Empowerment of Women
UPR	Universal Periodic Review
VHZR	Village Hazard Zone Relocation

PART 1. INTRODUCTION

1.1 Statement by the Ombudsman

As required under section 40 of the Ombudsman Act 2013, I present the State of Human Rights Report for 2017.

Since the establishment of the National Human Rights Institution in 2013, my Office has submitted two (2) State of Human Rights Reports. The 2015 report “For Samoa by Samoa” was the first ever attempt at a comprehensive report on the state of Human Rights in Samoa. The 2016 report was a focused report on the Rights of Persons with Disabilities. This year’s report, focuses on the impact of climate change on the full enjoyment of human rights in Samoa. It gives in addition an outline of the National Public Inquiry into Family Violence which commenced in January this year.

For more than a decade, the Government of Samoa has taken a leading role in addressing the impacts of climate change. Simultaneously, the Government has partnered with fellow Small Island Developing States to pressure developed nations to do their part to halt climate change and to support adaptation efforts around the world.

The Paris Agreement expresses international political resolve to deal with climate change. Although the strength of that resolve may be clouded by recently expressed attitudes in some quarters the Paris Agreement initiative remains in place.

I applaud the Government for ratifying the Paris Agreement and for consistently advocating for robust programmes to support mitigation and adaptation efforts in this country. Samoa and others have a clear moral case to press, and have been pressing it, upon the developed world. They have a Human Rights case also for such programmes and it is as well to begin defining that dimension of the global climate change problem. This report is the beginning of such an exercise for Samoa. In large part, unavoidably at this point, it is a desktop review to portray climate change impact in Human Rights terms as expressed in international Instruments and Treaties. It looks beyond the Paris Agreement to consider how international human rights law is affected by climate change, and considers how the Government can embrace a “human rights approach” to climate change policies.

The *Ombudsman Act 2013* gives the Ombudsman wide-ranging duties and powers to promote and protect human rights in Samoa. One of its human rights functions is to inquire into widespread, systemic or entrenched situations or practices that violate human rights. This can take the form of a “National (Public) Inquiry” which has the potential to address and resolve wide-spread human rights issues.

Domestic violence is a prevalent issue in Samoa. Rather than continuing to be reactive, Samoa through this Inquiry is being more proactive with regard to the problem. It is looking at Family Violence in the Samoan context with a view to opening up the issue for discussion and to understanding the problem ourselves for the shameful thing that it is, and laying out strategies and counter-measures that make sense to us and which are workable in Samoa.

This report, gives an overview of the Inquiry approach adopted by my Office to investigate Family Violence. A report of the Inquiry and its outcome will be completed as soon as possible and will make up the 2018 State of Human Rights Report.

Soifua



Maiava Iulai Toma
Ombudsman

1.2 Previous State of Human Rights Reports

The Ombudsman is required under section 40 of the *Ombudsman Act 2013* (Ombudsman Act) to prepare a report on the status of human rights in Samoa. The report includes:

- the status of human rights for the previous year;
- recommendations about reforms and other measures which could be taken to prevent or redress human rights violations;
- any action taken by Government on recommendations in any previous report; and
- any action taken by the Government to promote and protect human rights.

The report is to be submitted to the Speaker by June 30th of every year for tabling in the Legislative Assembly. The Legislative Assembly then refers the report to a Parliamentary committee responsible for human rights to scrutinise the report. The Parliamentary committee discusses the report with relevant personnel or agencies affected by the report and prepare and transmit its report and recommendations to the Legislative Assembly for debate.

Since the establishment of the National Human Rights Institution (NHRI) in 2013, the Office of the Ombudsman/NHRI (the Office) has submitted two (2) State of Human Rights Reports (SHRR) to the Speaker.

1.2.1 State of Human Rights Report 2015 “For Samoa by Samoa”

The SHHR 2015 was submitted to the Speaker on the 30th of June 2015. This report was the first ever attempt to comprehensively survey the state of Human Rights in Samoa. It provided a snapshot of the pressing human rights issues at the time.

1.2.2 State of Human Rights Report 2016 “Rights of Persons with Disabilities”

The Government of Samoa (GoS) declared its commitment to ratify the Convention on Persons with Disabilities (CRPD) by the end of 2016. It was appropriate therefore for the SHRR 2016 to focus on the Rights of Persons with Disabilities.

The report explained the CRPD and discussed the GoS’s obligations under it. It assessed the status of rights of persons with disabilities in education, health, employment etc and what the GoS needed to do to ensure compliance with the CRPD should it ratify the CRPD. The Office notes and commends the GoS for ratifying the CRPD on 6 December 2016.

The SHRR 2016 was referred and discussed by a Parliamentary Committee chaired by Hon Aeau Peniamina Leavai. To date, other than the ratification of the CRPD, GoS has not taken any action on the recommendations provided in the report.

PART 2. CLIMATE CHANGE AND HUMAN RIGHTS

2.1 Introduction

Climate change is a worldwide phenomenon that affects different regions in different ways. The people of Samoa are projected to face more extreme tropical cyclones, sea level rise, more days of extreme heat, and the impacts of ocean acidification. Other destructive impacts may also be felt in the future.¹ Because Samoa is responsible for only 0.0006% of global CO₂ emissions, the causes of climate change originate almost entirely from beyond Samoa's shores.² However, as residents of a small island developing state (SIDS) in the South Pacific, Samoans are being disproportionately affected by climate change.³ Coastal communities will be particularly impacted, and approximately 70% of the population of Samoa lives within 1 kilometer of the sea.⁴

2.1.1 Methodology

This report brings together existing research on the impacts of climate change in Samoa with legal arguments regarding the relationship between climate change and human rights. This desktop review does not cover every report or project that has been undertaken by the GoS and international development partners. Rather, it reframes existing work in the context of human rights to highlight how future climate action in Samoa and around the world could be strengthened by focusing on human rights. The final chapter considers ongoing efforts to relocate communities located in coastal hazard areas, and how human rights are impacted by forced resettlement.

Beyond the desktop review, the report references data collected in the Office's 2015 Human Rights Survey, as well as information collected during the consultations conducted for the SHRR 2015. The Office also met with several government agencies to compile the most up-to-date perspectives for inclusion in this update.

2.1.2 Samoa's Human Rights Obligations

The GoS has indicated a strong commitment to the promotion and protection of human rights. This is evidenced by its recent commitment at its Universal Periodic Review (UPR) with the United Nations (UN) Human Rights Council to eventually ratify all core international human rights treaties, the recent ratification of the CRPD, and continued support for the Office in the implementation of its human rights mandate. These commitments are a key reason why the Office was rated as an A status NHRI in 2016.

Samoa has also ratified numerous treaties and signed declarations that form the basis of the emerging field of climate change and human rights law. These include the International Covenant on Civil and Political Rights (ICCPR), the Convention on the Rights of the Child (CRC) and one of its Optional Protocols, the Convention for the Protection of All Persons from Enforced Disappearance (CED), the CEDAW, the CRPD, and the UN

1 Australian Bureau of Meteorology and CSIRO. (2011). Climate Change in the Pacific: Scientific Assessment and New Research. Volume 2: Country Reports. Retrieved from <http://www.pacificclimatechangescience.org/wp-content/uploads/2013/09/Volume-2-country-reports.pdf>

Australian Bureau of Meteorology and Commonwealth Scientific and Industrial Research Organization (CSIRO). (2014). Climate Variability, Extremes and Change in the Western Tropical Pacific: New Science and Updated Country Reports. Retrieved from http://www.pacificclimatechangescience.org/wp-content/uploads/2014/07/PACCSAP_CountryReports2014_WEB_140710.pdf

2 Samoan Ministry of Natural Resources and Environment. (2008). SECOND NATIONAL GREENHOUSE GAS INVENTORY, Samoa's Greenhouse Gas Emissions: 1994-2007. Retrieved from <http://unfccc.int/resource/docs/natc/samnc2nir.pdf>

3 UNFCCC. (2007). Vulnerability and Adaptation to Climate Change in Small Island Developing States. Retrieved from https://unfccc.int/files/adaptation/adverse_effects_and_response_measures_art_48/application/pdf/200702_sids_adaptation_bg.pdf

4 Project Document, Economy-wide integration of climate change adaptation and disaster risk management to reduce climate vulnerability of communities in Samoa, UNDP, at: <http://www.pacific-r2r.org/resources/r2r-documents/programme-documents/national-programme-documents/44-samoa-r2r-star-project-document/file> (Accessed 09 February 2017)

Framework Convention on Climate Change (UNFCCC).⁵

Outside the provisions of treaties which Samoa is party to, international norms make up what is considered to be ‘international customary law.’⁶ In Section 2 of the Ombudsman Act, it is stated that international customary law is included within the definition of ‘human rights’ in Samoa. Because of this, the Office will review the impacts of climate change as they relate to all major human rights treaties, including those that Samoa has not yet ratified.

In addition to treaties, Samoa has signed several international declarations that are relevant to climate change and human rights. As a member of the UN, Samoa accepts the provisions of the Universal Declaration of Human Rights (UDHR) and the UN Charter.

In November 2007, representatives from SIDS, including Samoa, met in Malé, Maldives and agreed to the Malé Declaration, which states that “Climate change has clear and immediate implications for the full enjoyment of human rights, including inter alia the right to life, the right to take part in cultural life, the right to use and enjoy property, the right to an adequate standard of living, the right to food, and the right to the highest attainable standard of physical and mental health.” Since the adoption of the Malé Declaration, SIDS have remained united in advocating for stronger action in the international community to address the human rights impacts of climate change. This eventually led to language being included in the preamble of the Paris Agreement in 2015, which references human rights.

2.1.3 Fa’asamoa and the Impacts of Climate Change

In the SHRR 2015, the Office discussed the unique relationship between Fa’asamoa⁷, or ‘the Samoan way’, and human rights. The report highlighted several core values of Fa’asamoa that mesh well with the general international understanding of human rights, and discussed the difficulties caused by imperfect translations of human rights concepts into Samoan. In this section, the Office revisits those core values in the context that, in some ways, the UN acts as the world’s ‘village council,’ and the core values of Fa’asamoa, alongside international human rights laws, are relevant in considering the best path forward for addressing climate change.

- Feavaa’i (Mutual Respect) is a core value for which Samoan culture is well known. It is demanded of all Samoans, particularly children towards their parents, brothers towards their sisters, serving members towards their chiefs, young towards the old, congregations towards their pastor, and so on.
 - In the international community, the views, needs, and security of other nations should be considered by all to be of great importance. In embracing feavaa’i, nations will listen to the views of others, and work to advance peace, prosperity, and wellbeing in all nations. Nations should therefore honor their commitments to international agreements, especially when they impact the wellbeing of other nations.
- Alofa (Love) is expressed not only within the family and community but also towards guests. It includes parents caring and providing for their children, ensuring that they receive the best of everything; children caring and looking after their elderly parents; brothers and sisters looking out for each other; neighbours providing help and assistance wherever they can; the commitment and sacrifice families make towards the church; and welcoming visitors to Samoa with open arms.

⁵ However, Samoa is not yet a party to the International Covenant on Economic, Social and Cultural Rights (ICESCR), the International Convention on the Elimination of All Forms of Racial Discrimination (CERD), the International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families (CMW), and the Convention Against Torture (CAT).

⁶ McInerney-Lankford, S., Darrow, M., & Rajamani, L. (2011). Human Rights and Climate Change: A Review of the International Legal Dimensions. The World Bank. Retrieved from <http://elibrary.worldbank.org/doi/book/10.1596/978-0-8213-8720-7>

⁷ Fa’asamoa refers to the history, culture, identity, traditions and practices of the Samoan people.

- o All countries around the world will face the challenges of climate change, and only through embracing the value of alofa can all nations and peoples meet this challenge. Love for one another as members of the world community is an integral part of developing global collective action to combat climate change.
- Fepuipua'i (Mutual Protection) is demonstrated when parents care for and protect their children from harm and danger, and vice versa when roles are reversed later in life; when the matai of the village ensures that members of the village live peacefully; and when villagers uphold and protect the dignity of the chiefs.
 - o In Samoa, members of a community are responsible for caring for and protecting others in need. This value can be applied to the international community as well. There is more than enough scientific information to know that climate change is real and that it poses a danger to people worldwide. As described in the following chapters, climate change is leading to increased risk from cyclones, coastal erosion, coral reef death and more. These impacts are directly affecting the ability of communities to live with the values of fa'asamoa. The value of fepuipua'i suggests that wealthier, less vulnerable nations must come to the aid of those more endangered by climate change.

2.2 Climate Change and Human Rights

Scientists around the world agree that the global climate is changing and that humans are responsible for much of the change.⁸ Temperature increases in the atmosphere and oceans, reduced snow and ice cover, and sea level rise have already been observed worldwide.⁹ While climate change is a global issue, its effects will be felt differently around the world. By accounting for local vulnerabilities, scientists and policymakers are considering how individual countries and communities can begin to adapt, with measures such as relocating vulnerable populations, building more resilient infrastructure, and monitoring public health impacts associated with climate change.

2.3 Climate Change in Samoa

The GoS has highlighted the nation's vulnerability to climate change for many years through UNFCCC communications, national development and sector plans, the National Adaptation Programme of Action (NAPA), and numerous scientific reports. The Office has collected a summary of projected climate change impacts reproduced from work done by the Australian Bureau of Meteorology and the Commonwealth Scientific and Industrial Research Organization (CSIRO) in 2011 and 2014.¹⁰ This summary was first produced by the Ministry of Natural Resources and Environment (MNRE) Global Environment Facility (GEF) Services Division as part of the Economy-wide integration to climate change adaptation and disaster risk management and reduction to reduce climate vulnerability of communities in Samoa project (EWACC). It has been adapted by the Office for this report, and the full table can be found in Appendix 1.

In summary, there is very high confidence that in Samoa, annual mean temperatures will increase, the number of extremely hot days will increase, sea levels will rise, sea surface temperatures will increase, the ocean will become more acidic, coral bleaching events will increase, and the aragonite saturation index (which is a measure that indicates coral reef growth) will decrease. There is also high confidence that the frequency and intensity of extreme rain events will increase. Other impacts are also likely to occur, but have lower levels of certainty in scientific models.

⁸ IPCC, 2014: Climate Change 2014: Synthesis Report. Contribution of Working Groups I, II and III to the Fifth Assessment Report of the Intergovernmental Panel on Climate Change [Core Writing Team, R.K. Pachauri and L.A. Meyer (eds.)]. IPCC, Geneva, Switzerland, 151 pp.

⁹ Ibid

¹⁰ Australian Bureau of Meteorology and CSIRO.(2011, 2014). Climate Change in the Pacific: Scientific Assessment and New Research. Volume 2: Country Reports. Retrieved from <http://www.pacificclimatechangescience.org/wp-content/uploads/2013/09/Volume-2-country-reports.pdf>

2.4 The Impact of Climate Change on the Full Enjoyment of Human Rights

In the following section, internationally recognized human rights will be reviewed, including (1) the legal frameworks in international law as they apply to climate change, (2) the impacts of climate change on those specific human rights in Samoa, and (3) the current policy frameworks in Samoa (if they exist). Overall concluding statements and recommendations are made at the end of the report.

The impacts of climate change on human rights are introducing new challenges to international law due to the “extraterritorial” nature of climate change.¹¹ While human rights law has traditionally been limited to states and their citizens, there is ongoing legal and academic debate suggesting the extraterritorial reach of international human rights law.¹² While this ongoing debate continues in the academic sphere, the Office agrees with scholars such as the Special Rapporteur on Human Rights and the Environment, John Knox¹³, along with the NHRIs of The Maldives¹⁴, Scotland¹⁵, and the Philippines¹⁶, that human rights law imposes extraterritorial legal requirements to defend and promote human rights in the face of climate change.

2.4.1 The Right to Life

International Legal Framework

Numerous international treaties and declarations have affirmed the Right to Life. In 1948, the UDHR declared in Article 3, “Everyone has the right to life, liberty and security of person.”¹⁷ Article 6 of the ICCPR states, “Every human being has the inherent right to life. This right shall be protected by law. No one shall be arbitrarily deprived of his life.”¹⁸ Article 6 of the CRC also declares that all children have the inherent right to life and that states “Shall ensure to the maximum extent possible the survival and development of the child.”¹⁹

The UN Human Rights Committee is currently circulating a draft ICCPR General Comment on the Right to Life to replace the older General Comment referenced above. While not yet part of international law, the shift in language is relevant. The draft General Comment states that, “States parties should also take adequate measures to protect the environment against life-threatening pollution, and work to mitigate other risks associated with natural catastrophes.”²⁰ This change in language clearly indicates a shift in norms as the international community considers the human rights impacts of climate change.

Current and Future Climate Change Impacts in Samoa

At its worst, climate change kills. A study by the Climate Vulnerable Forum found climate change is already responsible for 400,000 premature deaths each year.²¹ This includes such diverse impacts such as famine, drought, injury, vector borne illness, and more.

11 The effects of climate change are widespread, and do not adhere to national borders. International human rights law has historically only applied to the obligations of a nation to its own citizens, and not the citizens of other nations. However, the fact that emissions originating from one nation, such as coal plants in China or automobile emissions in the United States, can have a destructive impact on the enjoyment of human rights in other nations suggests new challenges for the application of human rights law.

12 Knox, John H., “Linking Human Rights and Climate Change at the United Nations” *Harvard Environmental Law Review*, Vol 33, 2009.

13 *Ibid*

14 Submission of the Maldives in response to HRC Resolution 7/23, “Human Rights and Climate Change” September, 2008. Available: http://www.ohchr.org/Documents/Issues/ClimateChange/Submissions/Maldives_Submission.pdf

15 “Climate Justice” The Scottish Human Rights Commission. Available: <http://www.scottishhumanrights.com/other-issues/climate-justice/>

16 “The Climate Change and Human Rights Petition” Greenpeace. Available: <http://www.greenpeace.org/seasia/ph/press/releases/Worlds-largest-carbon-producers-ordered-to-respond-to-allegations-of-human-rights-abuses-from-climate-change/The-Climate-Change-and-Human-Rights-Petition/>

17 Universal Declaration of Human Rights, GA Resolution 217A(III), UN Doc A/810 (1948), Art 3.

18 International Covenant on Civil and Political Rights, 1966, art 6

General Comment No. 6 on Article 6 of the ICCPR further states that the right to life is not to be interpreted narrowly, and that “the Committee considers that it would be desirable for States parties to take all possible measures to reduce infant mortality and to increase life expectancy, especially in adopting measures to eliminate malnutrition and epidemics.”

19 Convention on the Rights of the Child, 1989, art 6

20 Human Rights Committee, Draft General Comment No. 36 – The Right to Life, UN Doc CCPR/C/GC/R.36/Rev.2, distributed: September 2015.

21 DARA, Climate Vulnerability Monitor: A Guide to the Cold Calculus of a Hot Planet, 2nd ed. (2012).

Climate change also puts lives at risk in Samoa. The projected increase in the strength of tropical cyclones may lead to more disasters like the deadly Cyclones Val in 1991 and Evan in 2012. Cyclone Evan killed 14 people in the region and left more than 4,500 people temporarily homeless. Major flooding in areas such as Lelata village destroyed infrastructure, and caused great physical harm to Samoan communities.²² While no single storm can be exclusively attributed to climate change, scientific research has concluded that tropical cyclones in the South Pacific will become stronger, on average.²³ Strengthened by climate change, the storms of the future will increasingly threaten the Right to Life in Samoa.

In addition to cyclones, Samoa faces life endangering threats from tsunamis. In 2009, Samoa experienced a major tsunami, which destroyed entire communities and killed nearly 200 people in the region. Villages were left in ruins, and many areas in Southeastern Upolu never fully recovered. Projected sea level rise due to climate change would mean that future tsunami waves would be higher, deepening the risk to human life and limiting the effectiveness of adaptation measures such as sea walls.²⁴

Current Policy Framework

In 1960, the GoS adopted its Constitution, which included a declaration of a fundamental Right to Life in Part II Article 5. “No person shall be deprived of his life intentionally, except in the execution of a sentence of a court following his conviction of an offence.”²⁵ Laws against murder, assault, and other harm to people also confirm the commitment to defending the Right to Life.

2.4.2 The Right to Health

International Legal Framework

The Right to Health (frequently called the “right to the highest attainable standard of physical and mental health”) has been recognized by numerous international treaties and declarations. This right requires that every person has the right to access adequate healthcare, and that every person has the right to a standard of living that can keep them and their families healthy.

It was first proclaimed by the constitution of the World Health Organization in 1946,²⁶ and was also articulated in Article 25 of the UDHR.²⁷ The ICESCR proclaims in Article 12, “States Parties to the present Covenant recognize the right of everyone to the enjoyment of the highest attainable standard of physical and mental health.”²⁸ Other explicit declarations of the Right to Health are expressed in Article 5 of CERD²⁹, Articles 11 and 12 of CEDAW³⁰, and Article 24 of the CRC.³¹

The UN Human Rights Council also adopted Resolution 29/15 in 2015, which states that climate change impacts the full enjoyment of human rights, and requests that the Office of the High Commissioner for Human Rights (OHCHR) produce a report on the impact of climate change on the full enjoyment of the Right to Health.³² In May 2016, OHCHR released their report which affirms that, “Climate change directly and indirectly threatens the full and effective enjoyment of a range of human rights, including the rights to life, water and sanitation,

22 <http://www.savalinews.com/2012/12/17/4-dead-10-missing-over-4000-homelsss/>

23 Australian Bureau of Meteorology and CSIRO. (2011, 2014). Climate Change in the Pacific: Scientific Assessment and New Research. Volume 2: Country Reports. Retrieved from <http://www.pacificclimatechangescience.org/wp-content/uploads/2013/09/Volume-2-country-reports.pdf>

24 The Australia Institute, The Indian Ocean Tsunami and Sea Level Rise, at: http://www.tai.org.au/sites/default/files/WP67_8.pdf

25 Constitution of the Independent State of Western Samoa, 1960, part II art 3

26 Constitution of the World Health Organization, 1946, preamble.

27 Universal Declaration of Human Rights, GA Resolution 217A(III), UN Doc A/810 (1948), Art 3.

28 International Covenant on Economic, Social and Cultural Rights, 1966, art 12.

General Comment No. 14 to Article 12 of the ICESCR, states, “The right to health is not... a right to be healthy... The Committee interprets the right to health... as an inclusive right extending not only to timely and appropriate health care but also to the underlying determinants of health, such as access to safe and potable water and adequate sanitation, an adequate supply of safe food, nutrition and housing, healthy occupational and environmental conditions, and access to health-related education and information, including on sexual and reproductive health.”

29 International Convention on the Elimination of All Forms of Racial Discrimination, 1965, art 5.

30 Convention on the Elimination of All Forms of Discrimination Against Women, 1979, arts 11 and 12

31 Convention on the Rights of the Child, 1989, art 24.

32 Human rights and climate change, HRC Resolution 29/15, UN Doc A/HRC/29/L.21 (2015). At http://ap.ohchr.org/documents/dpage_e.aspx?si=A/HRC/29/L.21 (viewed 06Feb 2017)

food, health, housing, self-determination, culture and development.³³

Current and Future Climate Change Impacts in Samoa

Climate change is impacting the health of the Samoan people in many ways. This includes the direct health impacts of extreme weather events such as physical injury during cyclones, flooding, droughts and heat waves, as well as indirect effects such as waterborne diseases, malnutrition and foodborne diseases, vector-borne diseases, zoonoses, respiratory illness, and disorders of the eyes, ears, skin and other body systems. Climate change also has been shown to have diffuse effects such as impacts on mental/psychosocial illnesses, non communicable diseases (NCDs), pressures on fragile health systems, and population displacement.³⁴

In 2013, the Impact of Climate Change on Health in Samoa Project examined data collected by the National Health Service and found strong evidence of the impact of 2012 Cyclone Evan on human health. Specifically, the report found a marked increase in both communicable and non-communicable diseases during and post cyclone, such as upper respiratory infections, influenza-like illnesses, diarrhoea, diabetes, hypertension, and skin diseases such as cellulitis, scabies, and fungal infections.³⁵

In addition to these diseases, the projected increase in strength of tropical cyclones will likely cause additional harm to human health by causing physical injury, fostering mold growth in homes after floods, facilitating mosquito breeding, and by impacting the availability of food³⁶ and clean water³⁷.

Further, the projected increase in the number of extremely hot days may lead to more cases of heat stroke and dehydration. The Ministry of Health (MoH) does not yet collect data on heat-related illnesses, so there is not sufficient data to reach definitive conclusions at this time, although international projections suggest this to be a significant health impact in Samoa.³⁸

There is also evidence that disasters take a significant toll on individuals' mental health. In the wake of tropical cyclones, it has been found that domestic violence rates temporarily increase.³⁹ In defending the Right to Health, it is critical that nations and organizations recognize the links between mental health, domestic violence, and environmental stressors that are being exacerbated by climate change.

Current Policy Framework

In 2013, MoH released the Climate Adaptation Strategy for Health (CASH), which included 5 key strategic areas for the health impacts of climate change: (1) health governance, policy, and management, (2) cross-sectoral collaboration and partnership, (3) capacity development, (4) vulnerability and adaptation assessment, and (5) cross-sectoral prevention and risk management. This report informs work being done across the MoH to enhance the understanding about how climate change impacts health. This information will support future efforts to highlight climate change in sector plans, development projects, and studies.

The National Health Sector Plan for 2008-2018 contains no mention of climate change and anticipated climate impacts; however, future updates to the sector plan are anticipated to highlight these risks and the mid-term review of the Plan included climate change in the update.⁴⁰ The Strategy for the Development of Samoa (SDS)

33 United Nations Office of the High Commissioner for Human Rights, Analytical study on the relationship between climate change and the human right of everyone to the enjoyment of the highest attainable standard of physical and mental health, UN Doc A/HRC/32/23

34 WHO Western Pacific Region. (2015). Human health and climate change in Pacific island countries. Retrieved from http://iris.wpro.who.int/bitstream/handle/10665.1/12399/9789290617303_eng.pdf

35 Provided to the Office of the Ombudsman by the Ministry of Health

36 UN Food and Agriculture Organization. (2015). The Impact of Natural Hazards and Disasters on Agriculture and Food Security and Nutrition. Retrieved from <http://www.fao.org/3/a-i4434e.pdf>

37 Mosley, L. M., Sharp, D. S., & Singh, S. (2004). Effects of a tropical cyclone on the drinking-water quality of a remote Pacific island. *Disasters*, 28(4), 405–417.

38 In consultation with the Ministry of Health in April 2017

39 Morioka, K. (2016). Time to Act - Gender & Climate Change in the Pacific. UN Women.

40 Ministry of Health, National Health Sector Plan for Samoa, 2008-2018, Available: http://www.wpro.who.int/health_services/samoa_nationalhealthplan.pdf

2016/2017–2019/2020 directs all sector plans to highlight climate change impacts in the future.⁴¹

2.4.3 The Right to Food

International Legal Framework

The Right to Food is proclaimed in multiple treaties. Article 11 of the ICESCR affirms that “States... recognize the right of everyone to an adequate standard of living for himself and his family, including adequate food.”⁴² Article 24 of the CRC also requires the “provision of adequate nutritious foods and clean drinking water [for children].”⁴³

Current and Future Climate Change Impacts in Samoa

Climate change may hurt the ability of Samoan communities to sustain themselves. The projected increase in coral bleaching events can have a direct effect on the food supply, as the decrease in fresh fish will push more Samoans to rely on expensive imported food. The increasing reliance on imported food has been an exacerbating factor on the rise of obesity and type 2 diabetes in Samoa, demonstrating the interdependence and indivisibility of different human rights. Recent media interviews with fishermen in the Apia fish market have noted that it is becoming more difficult to fish close to shore.⁴⁴ It is unclear what the overall impacts on Samoa’s agricultural food supply will be, though the Samoan people’s ability to cultivate food on their ancestral lands may be impacted.

In a report to the Secretary General, the former Special Rapporteur on the Right to Food, Olivier De Schutter, expressed that the sustainability of ocean fisheries could be severely at risk due to climate change. Specifically, the warming seas may cause some species to migrate to “colder waters, which includes shifting their latitudinal range or moving to greater depths. Some fish will gradually move away from rich tropical waters, resulting in localized extinctions and the invasion of some species into waters where they were previously not found.” The migration of some fish species away from the tropics could directly impact the availability of fresh food available to the Samoan people, who have traditionally relied on fresh fish as a substantial part of their diet.

Current Policy Framework

The Government’s Agricultural Sector Plan 2016-2020 highlights the danger posed by climate change to the agriculture sector in Samoa, and outlines several community-based initiatives to adapt. Included in those plans are “Farming system diversity, integrated pest management, agroforestry and organic farming.” The plan also states that “greater attention will also be paid to sustainable land use management practices and to matching cropping systems recommendations with land capability assessment information. In the fisheries sector continued efforts will focus on promoting and supporting ecosystem and community-based approaches for sustainable management of inshore and offshore marine resources and robust monitoring, control and enforcement in Samoa’s Exclusive Economic Zone (EEZ).” These efforts are an attempt to build resilience to the effects of climate change, but may not alone be sufficient to avoid catastrophic impacts without significant international efforts to stop climate change and finance additional adaptation measures.

The Ministry of Agriculture and Fisheries (MAF) recently conducted a workshop with the support of the Secretariat for the Pacific Community, the UN Food and Agricultural Organization, AusAid, and GIZ. The workshop focused on plans to enhance the climate change resilience of fisheries and aquaculture so that they can continue to serve as a significant part of the Samoan diet. The workshop produced diverse recommendations to enhance governance, management, and monitoring, as well as focusing on developing additional inland

⁴¹ Strategy for the Development of Samoa (SDS) 2016/2017–2019/2020, at: <http://www.mof.gov.ws/Services/Economy/EconomicPlanning/tabid/5618/Default.aspx> (Accessed 07 March 2017)

⁴² International Covenant on Economic, Social and Cultural Rights, 1966, art 11.

General Comment No. 12 of the ICESCR adds, “In implementing this commitment, States parties should take steps to respect the enjoyment of the right to food in other countries, to protect that right, to facilitate access to food and to provide the necessary aid when required.”

⁴³ Convention on the Rights of the Child, 1989, art 24.

⁴⁴ Goerling, Samantha. Fish numbers decline: Climate change, coral bleaching blamed. The Samoa Observer, 16 January 2016.

aquaculture.⁴⁵

MAF also maintains internal memoranda called Information Notes, one of which guides adaptation measures for the agriculture and fisheries industries. Recommendations include diversifying root crops away from taro monoculture, identifying and evaluating climate-resilient crops for introduction, adjusting harvest calendars using recent climate data, promoting freshwater aquaculture, enhancing monitoring of ciguatera poisoning, and more. The adaptation objectives have successfully identified adaptive actions, but the lack of a consistent and sufficient stream of funding leaves implementation of all goals uncertain.⁴⁶ Ensuring the adequate support and funding of projects like these should be central to international efforts to make human rights central to international climate change policy.

2.4.4 The Right to Water and Sanitation

International Legal Framework

Numerous reports and declarations include affirmations of the Right to Water and Sanitation. Although it is not explicitly mentioned in the ICCPR or ICESCR, the UN Committee for Educational, Social, and Cultural Rights has elaborated in its General Comments to state that the Right to Water is inferred and exists within ICESCR.^{47,48} The UN General Assembly also affirmed the Right to Water in passing Resolution 64/292, which affirms “the right to safe and clean drinking water and sanitation as a human right that is essential for the full enjoyment of life and all human rights.”⁴⁹ CEDAW and the CRC also contain explicit mention of the Right to Water and Sanitation.⁵⁰

Current and Future Climate Change Impacts in Samoa

As highlighted in the localized projections in Appendix 1, there is no clear agreement on how climate change will impact annual average rainfall in Samoa. However, the increase in severity of tropical cyclones is projected with high confidence.⁵¹ Floods due to extreme weather events, such as cyclones, can lead to severe contamination of surface water supplies, and saltwater intrusion caused by sea level rise can harm groundwater supplies.⁵² Samoa has few alternatives for freshwater supplies should one of these catastrophic events occur.

The Former Special Rapporteur on the Human Right to Safe Drinking Water and Sanitation stated in a position paper that climate change “will undermine water quality in areas flooded either by rain or by sea water.” The paper emphasizes that coastal zones and cities and small islands, such as Samoa, are particularly sensitive to this consequence of climate change.⁵³

Current Policy Framework

The National Environment and Development Sector Plan 2013-2016 includes a sector strategy for water, which includes directives to strengthen watershed conservation and management, improve knowledge and

⁴⁵ Provided to the Office by the MAF

⁴⁶ Ibid

⁴⁷ General Comment No. 15 to Articles 11 and 12 of the ICESCR states that, “The human right to water entitles everyone to sufficient, safe, acceptable, physically accessible and affordable water for personal and domestic uses.”

⁴⁸ General Comment No. 14 of the ICESCR also states “The Committee interprets the right to health, as defined in article 12.1, as an inclusive right extending not only to timely and appropriate health care but also to the underlying determinants of health, such as access to safe and potable water and adequate sanitation.”

⁴⁹ The human right to water and sanitation, GA Resolution 10967, 3 August 2010, A/RES/64/292, at <http://www.refworld.org/docid/4cc926b02.html> (viewed 9 January 2017)

⁵⁰ Convention on the Elimination of All Forms of Discrimination Against Women, 1979, art 14.
Convention on the Rights of the Child, 1989, art. 24.

⁵¹ Australian Bureau of Meteorology and CSIRO. (2011, 2014). Climate Change in the Pacific: Scientific Assessment and New Research. Volume 2: Country Reports. Retrieved from <http://www.pacificclimatechangescience.org/wp-content/uploads/2013/09/Volume-2-country-reports.pdf>

⁵² UNFCCC. (2007). Vulnerability and Adaptation to Climate Change in Small Island Developing States. Retrieved from https://unfccc.int/files/adaptation/adverse_effects_and_response_measures_art_48/application/pdf/200702_sids_adaptation_bg.pdf

⁵³ Catarina de Albuquerque, Independent Expert on the right to safe drinking water and sanitation, Climate Change and the Human Rights to Water and Sanitation, 2000, at http://www.ohchr.org/Documents/Issues/Water/Climate_Change_Right_Water_Sanitation.pdf.

understanding of water resources, strengthen enforcement of water sector policies and plans, and enhance community participation in water resources management.⁵⁴

In the NHRI's 2015 SHRR, access to water and sanitation was identified as a challenge in some parts of Samoa. The 2009 Demographic and Health Survey (DHS) report claimed that 98% of households have access to an 'improved' water source and 81% report having water piped to their homes. However, many piped water sources remain intermittent and subject to contamination.⁵⁵ Approximately 73% of Samoan wastewater is disposed of in pit latrines or septic systems, which can leak into the surrounding environment and contaminate water supplies.⁵⁶ During the village consultation process for the 2015 SHRR, every village consultation in Savaii, Apolima, and Manono, and some on Upolu complained of regular water supply issues.⁵⁷ In 2016, the European Union and Samoa agreed on a 20.2 million Euro water and sanitation project. The purpose of the funds is to support Samoa in achieving its water and sanitation policy "Reliable, clean, affordable water and basic sanitation within the framework of Integrated Water Resources Management, for all the people in Samoa to sustain health improvements and alleviate poverty."⁵⁸ The nascent project is still in its early stages, but demonstrates a continued focus on confronting water and sanitation challenges in Samoa.

2.4.5 The Right to Adequate Housing

International Legal Framework

There are several treaties, reports, and declarations that include direct references to the Right to Adequate Housing. This includes Article 25 of the UDHR, Article 5 of CERD, Article 14 of CEDAW, and Article 27 of the CRC. However, the most comprehensive standard for the right to housing exists in Article 11 of the ICESCR, which states that all families are entitled to an adequate standard of living, including adequate housing.⁵⁹

In relation to climate change the 2009 OHCHR report emphasizes that human rights guarantees "(a) adequate protection of housing from weather hazards (habitability of housing); (b) access to housing away from hazardous zones; (c) access to shelter and disaster preparedness in cases of displacement caused by extreme weather events; (d) protection of communities that are relocated away from hazardous zones, including protection against forced evictions without appropriate forms of legal or other protection, including adequate consultation with affected persons."⁶⁰

Current and Future Climate Change Impacts in Samoa

In Samoa, more than 70% of the population lives within 1 kilometer of the sea. According to the IPCC's AR5 report, estimates for global mean sea level rise are between 26 and 98 cm by 2100, which is higher than the 18 to 59 cm projected in the older AR4 report. Climate change therefore threatens the Right to Housing in many ways, including an increase in flooding and the intensity of extreme weather events which may destroy housing. Droughts, floods, and erosion can also cause residential areas to become uninhabitable, and sea level rise can threaten settlements in low-lying areas.⁶¹

54 National Environment and Development Sector Plan 2013-2016, at: https://unstats.un.org/unsd/nationalaccount/workshops/2013/Samoa/Nat_SEEA_3.pdf

55 State of Human Rights Report, Office of the Ombudsman, Samoa, 2015

56 State of Human Rights Report, Office of the Ombudsman, Samoa, 2015

57 State of Human Rights Report, Office of the Ombudsman, Samoa, 2015

58 <http://www.pireport.org/articles/2016/06/16/eu-samoa-sign-227-million-water-and-sanitation-deal>

59 International Covenant on Economic, Social and Cultural Rights, 1966, art 11.

This is further detailed by General Comment 4 of the Committee on Economic, Social, and Cultural Rights, which affirmed "the human right to adequate housing...is of central importance for the enjoyment of all economic, social and cultural rights.... [and that] the right should not be interpreted narrowly. Rather it should be seen as the right to live somewhere in security, peace and dignity." The General Comment further defines the word "adequate" by defining that adequate housing must include legal security of tenure, availability of services, materials, security, and infrastructure, affordability, habitability, accessibility, accessibility, location, and cultural adequacy.

60 Office of the High Commissioner for Human Rights, Report of the Office of the United Nations High Commissioner for Human Rights on the Relationship between Climate Change and Human Rights, 2009, UN Doc A/HRC/10/61. At: <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G09/103/44/PDF/G0910344.pdf?OpenElement>.

61 Fifth Assessment Report (AR5), Intergovernmental Panel on Climate Change, 2013.

In 2009, the UN Special Rapporteur on the Right to Adequate Housing, Raquel Rolnik, visited the Maldives to investigate the impact of climate change on the Right to Housing. Her report cautioned that “climate change will significantly impact the enjoyment of many human rights related to protecting the right to adequate housing for Maldivians, including by: the loss of or contamination of freshwater sources; the total or partial destruction of houses and properties because of a rise in the sea level and natural disasters such as floods and cyclones; and the loss of livelihoods. Since many economic activities depend on the coastal ecosystem, climate change will affect communities’ livelihoods, including through loss of land, and environmental changes affecting fisheries and agriculture and other livelihood activities.”⁶² Many of these same risks exist in Samoa where most people live in low-lying coastal communities and are highly dependent on small local fisheries.

Current Policy Framework

Given the impact of climate change on the Right to Housing, it is critical that the GoS, through sector planning and a whole-of-government approach ensure that the Right to Adequate Housing is protected in the face of climate change. This issue is further explored in Section F as it relates to internal migration and relocation.

2.4.6 The Right to Self-Determination

International Legal Framework

The Right to Self-Determination has many references in international treaties and declarations. Put plainly, the Right to Self-Determination implies that all peoples have the right to define their own destiny through economic, social, and cultural development. Article 1 of the UN charter calls for respect for the “self-determination of peoples.”⁶³ Article 1 of both the ICCPR and the ICESCR states that “All peoples have the right of self-determination. By virtue of that right they freely determine their political status and freely pursue their economic, social, and cultural development.”⁶⁴

Current and Future Climate Change Impacts in Samoa

The 2009 report by the OHCHR articulated that “sea level rise and extreme weather events related to climate change are threatening the habitability... of low-lying island States. Equally, changes in the climate threaten to deprive indigenous peoples of their traditional territories and sources of livelihood. Either of these impacts would have implications for the right to self-determination.”⁶⁵

As climate change displaces communities and erodes families’ connections to their land, it threatens the location-based institution of traditional village governance, as well as their cultural heritage. Projections have worsened since the release of the AR5 report, which states, “Current and future climate-related drivers of risk for small islands during the 21st century include sea level rise (SLR), tropical cyclones, increasing air and sea surface temperatures, and changing rainfall patterns... The future risks associated with these drivers include loss of adaptive capacity and ecosystem services critical to lives and livelihoods in small islands.” According to a 2015 report by U.N. Special Rapporteurs, climate change hinders the ability of SIDS citizens to “continue to live on their traditional territory, and... to enjoy and exercise their right to self-determination.”⁶⁶

62 Raquel Rolnik, Report of the Special Rapporteur on adequate housing as a component of the right to an adequate standard of living, and on the right to non-discrimination in this context, Addendum, Mission to Maldives, 2010, at <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G10/102/16/PDF/G1010216.pdf?OpenElement> (viewed 22 December 2017)

63 Charter of the United Nations, 1945.

64 International Covenant on Economic, Social and Cultural Rights, 1966, art 1.
International Covenant on Civil and Political Rights, 1966, art 1.

65 Office of the High Commissioner for Human Rights, Report of the Office of the United Nations High Commissioner for Human Rights on the Relationship between Climate Change and Human Rights, 2009, UN Doc A/HRC/10/61. At <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G09/103/44/PDF/G0910344.pdf?OpenElement> (visited 20 December 2016)

66 The United Nations Special Rapporteurs Ms. Catalina Devandas Aguilar, Mr. John H. Knox, Mr. Philip Alston, Mr. Léo Heller, Ms. Virginia Dandan, The Effects of Climate Change on the Full Enjoyment of Human Rights, Report to the Climate Vulnerable Forum, 30 April 2015, at <http://www.thevcf.org/wp-content/uploads/2015/05/humanrightsSRHRE.pdf> (visited 22 December 2016)

2.4.7 The Right to Meaningful and Informed Participation

International Legal Framework

The Right to Meaningful and Informed Participation implies that all people have a right to participate in public affairs, and have a right to be provided adequate information so that they might be informed in their own decision-making. This right, especially with regard to environmental affairs, is grounded in several treaties and declarations. Article 25 of the ICCPR states that all citizens have a right to take part in public affairs.⁶⁷ Meaningful and Informed Participation implies a right to access information, including information about climate change.⁶⁸

Article 19 of the UDHR states that “Everyone has the right to freedom of opinion and expression; this right includes the right to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers.”⁶⁹ CEDAW asserts the equal rights of women and girls to participate in political and public discourse both domestically and internationally⁷⁰, and the CRPD does the same for people with disabilities⁷¹. Article 12 of the CRC states that “States Parties shall assure to the child who is capable of forming his or her own views the right to express those views freely in all matters affecting the child.”⁷²

Current and Future Climate Change Impacts in Samoa

The GoS ratified the Paris Agreement, which states in its preamble that “Parties should, when taking action to address climate change, respect, promote and consider their respective obligations on human rights.” However, in considering the impacts of climate change on human rights, the Office is concerned that developed nations have made insufficient progress in the years after the Paris Agreement to protect the human rights of the Samoan people.

Recalling the extraterritorial nature of climate change, the Right to Meaningful Participation holds a unique role in the climate change debate. While it cannot be expected that the Samoan people participate in decisions being made by other nations or foreign companies, those foreign entities have a responsibility to respect international agreements to combat climate change, to disclose relevant climate change-related information, and to act in the best interest of all peoples around the world when new information becomes available.

The continued subsidization of fossil fuel companies by developed nations, despite mitigation pledges made in Paris,⁷³ appears to be in stark contrast to the human right to meaningful and informed participation. There are also deeply concerning reports that some fossil fuel companies knew about the impacts of climate change for decades while simultaneously spreading disinformation about the science.⁷⁴ The purposeful spreading of falsehoods appears to be in stark contrast to the Right to Meaningful and Informed Participation. These concerns are a key part of the ongoing inquiry by the Philippines NHRI into whether major fossil fuel companies have violated the human rights of the Filipino people.⁷⁵ The Office continues to closely monitor the progress of the on-going inquiry, and supports the approach taken by the Filipino NHRI to address human rights abuses by foreign companies.

67 International Covenant on Civil and Political Rights, 1966, art 25.

68 Submission of the Office of the High Commissioner for Human Rights to the 21st Conference of the Parties to the United Nations Framework Convention on Climate Change, at <http://www.ohchr.org/Documents/Issues/ClimateChange/COP21.pdf> (visited 12 December 2016)

69 Universal Declaration of Human Rights, GA Resolution 217A(III), UN Doc A/810 (1948)

70 Convention on the Elimination of All Forms of Discrimination Against Women, 1979.

71 Convention on the Rights of Persons with Disabilities, 2006.

72 Convention on the Rights of the Child, 1989, art 12.

73 Avaneesh Pandey, US Fossil Fuel Subsidies Increase 'Dramatically' Despite Climate Change Pledge, International Business Times, Nov. 12 2015.

74 Shannon Hall, Exxon Knew about Climate Change almost 40 years ago, Scientific American, Oct. 26 2015.

75 “The Climate Change and Human Rights Petition” Greenpeace. Available: <http://www.greenpeace.org/seasia/ph/press/releases/Worlds-largest-carbon-producers-ordered-to-respond-to-allegations-of-human-rights-abuses-from-climate-change/The-Climate-Change-and-Human-Rights-Petition/>

2.4.8 The Right to Take Part or Participate in Cultural Life

International Legal Framework

The Right to Take Part or Participate in Cultural Life is affirmed by numerous treaties and declarations. Article 27 of the UDHR states that “Everyone has the right freely to participate in the cultural life of the community, to enjoy the arts and to share in scientific advancement and its benefits.”⁷⁶ The ICESCR repeats that statement in Article 15.⁷⁷

Current and Future Climate Change Impacts in Samoa

In Samoa, customary land and village institutions are central to cultural identity. The ability to take part or participate in cultural life is deeply tied to one’s ancestral lands, which is why most land in Samoa is customarily held. The Samoan word for land (*fanua*) is the same as the word for placenta, demonstrating how deeply the land is intertwined with identity and heritage.

For example, village councils are location-based in accordance with customary law, many Samoans bury their ancestors on their land, and many traditional fales, where cultural practices take place, have stood for generations. Climate change is directly impacting the ability of some Samoans to continue to live on their ancestral lands, and in many villages, families have been forced to relocate due to sea level rise and natural disasters.

The GoS does not yet have a national policy for consultation in place in the event of forced displacement to ensure that relocations due to climate change do not exacerbate human rights abuses. These families have few options when their lands, which are crucial to their cultural heritage, become uninhabitable, and a human rights-centric approach to relocation should be embraced. These questions are further explored in Section F.

2.5 Impacts on Marginalized Communities

2.5.1 Women

Samoa is a party to CEDAW. While the Convention does not explicitly mention climate change, advancing gender equality is a central issue to climate change and human rights.

It is becoming increasingly clear that women disproportionately suffer the effects of climate change.⁷⁸ During the 2009 tsunami in Tonga and Samoa, approximately 70% of the adults who died were female.⁷⁹ According to some of the academic literature⁸⁰, “possible reasons for the higher mortality rates among women and children lie in their social roles, where women and children are likely to be in the domestic sphere, in poorly constructed homes, while men are out in open spaces such as farm gardens or the sea. Care of children and the elderly also slow down women’s opportunities to escape, while their... [statistically] less practiced swimming ability reduces their chances in tsunamis and floods.”⁸¹

Sadly, empirical studies have also found that after a natural disaster occurs, domestic violence rates temporarily spike. While no sufficient data exists in Samoa, one study found a 300% increase in new domestic violence cases

76 Universal Declaration of Human Rights, GA Resolution 217A(III), UN Doc A/810 (1948);

General Comment No. 21 from the Committee on Economic, Social, and Cultural Rights delves into additional detail, stating “The right to take part in cultural life can be characterized as a freedom. In order for this right to be ensured, it requires from the State party both abstention (i.e., non-interference with the exercise of cultural practices and with access to cultural goods and services) and positive action (ensuring preconditions for participation, facilitation and promotion of cultural life, and access to and preservation of cultural goods).” Further, “culture is a broad, inclusive concept encompassing all manifestations of human existence. The expression “cultural life” is an explicit reference to culture as a living process, historical, dynamic and evolving, with a past, a present and a future.”

77 International Covenant on Economic, Social and Cultural Rights, 1966, art 15.

78 Morioka, K. (2016). *Time to Act - Gender & Climate Change in the Pacific*. UN Women.

79 Ibid

80 Bradshaw, S. and Fordham, M. (2013). *Women, Girls and Disasters: A Review for DFID*. London: DFID.

81 Morioka, K. (2016). *Time to Act - Gender & Climate Change in the Pacific*. UN Women.

at Tanna Women Counselling Centre after two tropical cyclones hit Tafea, Vanuatu in 2011.⁸² These impacts suggest that advancing gender equality is a critical step in developing a society that is resilient to climate change. In future disasters, the Government of Samoa should therefore prioritize collecting gender disaggregated data to determine what specific disparities exist in Samoa.

Samoa is taking some productive steps to address this injustice. UN Women recently conducted a review of progress on this issue, and found that “the Ministry of Women, Community and Social Development (MWCSD) and the Disaster Management Office (DMO) are taking proactive steps to involve more women in DRR project consultations, instead of them being merely observers or in some cases ‘caterers’ for community meetings.” Gender has also been included as a standard focus area for Post Disaster Needs Assessments (PDNAs). Gender issues were examined in the PDNA for Cyclone Evan in 2012, which has informed the ongoing work of the DMO.⁸³ Samoa’s Disaster Advisory Committee also includes MWCSD as a permanent member. MWCSD is also responsible for the ongoing effort to finalize policies on gender and persons with disabilities, which are still in draft form.⁸⁴

The draft National Disaster Risk Management Strategy (NDRMS) has a substantial analysis of gender issues in relation to disasters. In addition, the DMO has a draft gender and NDRMS policy that specifically looks at how gender equality and women’s empowerment will be addressed through the NDRMS.

2.5.2 Children

As some of the most vulnerable members of society, children are particularly at risk from the effects of climate change.

Samoa has ratified the CRC, in which Article 3 requires state parties to make decisions in the best interest of the child.⁸⁵⁸⁶ The UN Human Rights Council, in adopting resolution 32/33, stated that “children are among the most vulnerable to climate change, which may have a serious impact on their enjoyment of the highest attainable standard of physical and mental health, access to education, adequate food, adequate housing, safe drinking water and sanitation.”⁸⁷ The resolution requested that OHCHR produce a report on the impact of climate change on the human rights of children. This report is slated for release in 2017. The consequences of climate change for children are also highlighted in a recent report by UNICEF, which focused on the disproportionate impact of climate change on children.⁸⁸

2.5.3 People with Disabilities

Samoa is a party to the CRPD. People with disabilities are often more vulnerable in the event of a disaster due to the lack of accessibility in evacuation and recovery efforts, and the specific exclusion of disability issues in disaster management planning.⁸⁹ The Hyogo and Sendai Frameworks on disaster management, which guide global disaster risk reduction efforts, do have provisions to ensure accessibility for persons with disabilities during disasters. All efforts to enhance national disaster management planning are expected to include sufficient prioritization for accessibility.

⁸² Ibid

⁸³ Consultation with DMO

⁸⁴ Consultation with DMO

⁸⁵ The Global Partnership for Disability & Development (GPDD) and the World Bank. (2009). *The Impact of Climate Change on People with Disabilities*. Retrieved from http://www.cbm.org/article/downloads/82788/E-discussion_on_climate_change_and_disability.pdf

⁸⁶ In General Comment No. 15 of the CRC, the Committee on the Rights of the Child emphasizes that, “The Committee draws attention to the relevance of the environment, beyond environmental pollution, to children’s health. Environmental interventions should, inter alia, address climate change, as this is one of the biggest threats to children’s health and exacerbates health disparities. States should, therefore, put children’s health concerns at the centre of their climate change adaptation and mitigation strategies.”

⁸⁷ Human Rights and Climate Change, HRC Resolution 32/33, Adopted 01 July 2016, UN Document A/HRC/RES/32/33, At: http://ap.ohchr.org/documents/alldocs.aspx?doc_id=26900 (Viewed 16 Feb 2017)

⁸⁸ UNICEF. (2015). *Unless We Act Now: The Impact of Climate Change on Children*. Retrieved from https://www.unicef.org/publications/files/Unless_we_act_now_The_impact_of_climate_change_on_children.pdf

⁸⁹ *The Impact of Climate Change on People with Disabilities*, Report of the e-discussion hosted by The Global Partnership for Disability & Development (GPDD) and The World Bank (Human Development Network - Social Protection/Disability & Development Team). June, 2009. Available: http://www.cbm.org/article/downloads/82788/E-discussion_on_climate_change_and_disability.pdf

There are several initiatives that explicitly aim to enhance the representation of persons with disabilities in disaster risk reduction and climate adaptation planning. DMO, along with MWCSO, are finalizing the mainstreaming of disability concerns into all policies and programmes, including data collection, post disaster needs assessments, response measures, and adaptation projects.⁹⁰ Samoa's Disaster Advisory Committee, which undertakes risk reduction activities across sectors, has granted membership to Nuanua o le Alofa (NOLA), Samoa's largest disability advocacy organization to ensure that the needs of persons with disabilities are central to all disaster response efforts.⁹¹ This work helps to ensure the Right to Meaningful and Informed Participation is ensured for persons with disabilities in Samoa.

2.5.4 Future Generations

Although there are no UN treaties explicitly pertaining to the human rights of future generations, the intergenerational nature of climate change impacts has prompted the Office to consider the issue. The UNFCCC has an intergenerational focus, with the Parties agreeing that they “should protect the climate system for the benefit of present and future generations of humankind.”⁹²

The children, grandchildren and all future generations of Samoa have no legal representation or an official advocate at UN meetings. Unfortunately, those who have not yet been born are also likely to be the most affected by climate change. Without consideration of their rights, the decisions of policymakers today will inevitably devalue their lives and needs.

In Samoa, customary lands exist to preserve the heritage of families and villages for future generations by making those lands unavailable for sale by individuals. Beyond that, the fa'asamoa core values of Feavaa'i and Fepuipua'i (Mutual Protection and Mutual Respect) imply a responsibility to one's ancestors and heritage. As concern for future generations is already prioritized in Samoa, it is our responsibility to be a leading advocate internationally for the consideration of future generations in climate change and human rights law.

2.6 Human Rights Implications of Internal Migration Caused by Climate Change

The effects of climate change touch the lives of all people, industries, and sectors. As discussed in the previous chapters, there are numerous ways in which the effects of climate change impact the full enjoyment of human rights in Samoa. In this chapter, the Office explores one impact in greater depth: the forced relocation of communities living in coastal areas. Given that 70% of Samoans live within one kilometer of the sea, it is not surprising that there are already cases of communities being forced to relocate due to sea level rise and coastal erosion. When communities are forced to relocate, it inherently impacts their enjoyment of human rights, and the Government has a responsibility to ensure that all relocation efforts defend the human rights of affected communities. This section begins by reviewing the history of migration in Samoa, followed by a short review of international efforts to protect human rights in cases of forced migration. Finally, current efforts to relocate communities living in hazard zones are reviewed and recommendations are made to enhance human rights safeguards.

2.6.1 Recent History of Relocation in Samoa

Migration within one nation, or internal migration, has occurred numerous times throughout Samoa's history. According to written and oral history⁹³, widespread internal migration occurred between the 1830's and the 1890's, when Christian missionaries began to arrive. During this time, families that were once scattered across the landscape began to cluster into coastal communities, creating many of the villages we see today. This migration allowed for the founding of churches and provided the basis for commercial trade.

⁹⁰ Consultation with DMO

⁹¹ Consultation with DMO

⁹² United Nations Framework Convention on Climate Change, 1992, preamble

⁹³ This historical narrative originates from the draft Samoa Relocation Strategy which is being finalized by MNRE.

From the 1940's to the 1970's another major relocation occurred as the construction of wharves and roads proliferated. The expansion of economic opportunities due to improved infrastructure led families to concentrate in coastal communities in order to be closer to major trade and travel routes. As the city of Apia continued to grow, and more freehold land became available, families migrated to the urban area in pursuit of additional educational and professional opportunities. These migrations were voluntary, because they occurred in the pursuit of opportunity and were not compelled by external forces.

Over the past few decades, numerous communities have experienced involuntary migration due to hazards exacerbated by climate change. After the Tropical Cyclones Val and Ofa in the early 1990's, numerous villages were destroyed, leading the government to begin constructing inland infrastructure to allow for migration away from the coast. Communities that have experienced significant climate-related migration include Safai and Fagamalo in Matautu, Papa Sataua and Fagasa, Vaisala, Falealupo and Tufutafoe, Lefagaoalii, and Gataivai. After the 2009 tsunami, communities in the Lepa and Aleipata districts also relocated away from hazard zones.

2.6.2 Climate Change-Related Migration and Human Rights

There are numerous human rights implications of migration caused by climate change, including the rights to housing, meaningful and informed participation, and cultural heritage. It is inherently unjust when communities are forced to move without their consent. Samoan communities exist largely on lands that are customarily held, which further complicates the human rights dimension of internal migration, as merely compensating people for the loss of physical assets is insufficient when considering the cultural loss associated with customary land.

Several questions must be addressed to protect the human rights of people undergoing forced migration. Who has the authority to determine that an area has become uninhabitable? On what basis can that determination be made? What rights should be afforded to communities to question, challenge, or otherwise engage in decisions to relocate? What support or compensation should be given to the affected communities and who should pay? Once moved, what rights do the relocated communities have to the evacuated lands? How should temporary relocations be treated differently from permanent resettlements? How should relocations from customary lands be treated differently from other relocations? These questions must be answered to produce a migration process that embraces a human rights approach.

In 1998, the Representative of the Secretary-General on Internally Displaced Persons, Francis M. Deng, spearheaded an effort to create the Guiding Principles on Internal Displacement (referred to as the 'Guiding Principles'), which act as international standards for a human rights-based approach to internal displacement. While not 'hard law,' the Guiding Principles restate relevant hard law and apply those principles to the human rights of internally displaced persons. Appendix 2 contains a truncated list of standards from the Guiding Principles that must be included in climate change-related relocation and resettlement procedures to protect the human rights of the communities involved.⁹⁴

Climate change-induced displacement also has unique properties that are not explicitly addressed in the Guiding Principles. According to a 2011 report of the Special Rapporteur on the Human Rights of Internally Displaced Persons, "Some climate change-induced displacement..., such as movements triggered by slow-onset disasters, may require more emphasis on the positive obligations of States... to anticipate, plan ahead and take measures to prevent or mitigate conditions likely to bring about displacement and threaten human rights." This suggests that governments must develop capacities to detect potential slow onset disasters and displacement situations early on. The report also emphasizes the importance of reducing displacement impacts of climate change mitigation efforts, such as hydroelectric development and forest conservation.⁹⁵

Samoa has seen many projects support climate adaptation efforts across the nation. The Office conducted a desktop review of these programmes' efforts to develop a process for relocation and resettlement in order to consider the human rights implications of those steps. Many of these documents, including the National Adaptation Programme of Action and the National Environment Sector Plan 2013-2016, mention the importance

⁹⁴ Guiding Principles on Internal Displacement, United Nations, 1998, At: <https://www.brookings.edu/wp-content/uploads/2016/07/GPEnglish.pdf>

⁹⁵ Report of the Special Rapporteur on the human rights of internally displaced persons, Chaloka Beyani, OHCHR, 2009, UN Doc A/66/285, at: http://ap.ohchr.org/documents/dpage_e.aspx?si=A/66/285

of relocating critical infrastructure and community resettlement due to climate change. However, they do not offer any guidance on that process, nor do they suggest that human rights be prioritized.

2.6.3 Ongoing Efforts to Develop a Process for Resettlement and Relocation

An ongoing project financed by the Adaptation Fund since 2013 has included developing Coastal Infrastructure Management (CIM) Plans for villages, developing Village Hazard Zone Relocation Plans, and producing a relocation handbook to guide relocation plans. The project document of the Enhancing Resilience of Samoa's Coastal Communities to Climate Change Project indicates that in conducting village consultations nationwide, 15 villages concluded that hazard zone relocations were a preferable option, and the planning process as outlined in the project's materials is summarized here:

1. Once hazard zone relocation is agreed to by the village fono, detailed plans will be produced that focus on both housing and critical infrastructure, such as access roads and utilities;
2. Formulation of the village relocation plans will commence with a detailed planning exercise based upon the relevant village CIM Plan. From this, the affected households can be identified as well as potential locations for the families to relocate. This will be broadly determined and will need to be discussed in detail with the village council and the concerned families. A framework for this consultation process already exists with the CIM Plan Handbook which outlines procedures and protocols to be followed for a village consultation process;
3. Following initial village consultations, a draft relocation plan overlaid on the aerial photograph base of the CIM Plan will be prepared for a further village consultation. The suggested location of individual houses and new infrastructure will be shown on the plan together with a suggested sequencing of works. Exact costs for Government activities to support hazard zone relocation will be determined using unit rates updated from the costing information already contained in the CIM Plan reports;
4. Once agreed with the village, a formal agreement will be prepared committing both the village and Government to a programme of relocation actions. In formulating the relocation plans, consideration will be given to a range of financial incentives, which may be required to facilitate household removals.

Another component of the same project is the adoption of a National Relocation Strategy. The Strategy continues to be in draft form, which prevented the relevant project objectives from being achieved as of the project's midterm review in January 2016. The draft Relocation Strategy is intended to guide future Village Hazard Zone Relocation (VHZR) Plans and includes,

1. International Strategy: Guiding government ministries to advocate for additional Loss and Damage recognition in international negotiations and to lead regional efforts to support climate migrants.
2. National Strategy: To review relevant legislation to develop the necessary legal framework for the relocation of communities affected by climate change, and the mainstreaming of integrating relocation planning into sectorial plans and programmes.
3. Community Involvement: To encourage village councils to assist with the relocation of those identified in CIM plans and VHZR plans to be in need of resettlement.
4. Information Gathering and Management: To compile information and data on relocation and resettlement to assist future planning.
5. Public Awareness and Capacity Building: To enhance public awareness about the importance of relocation planning to climate change adaptation.
6. Village Hazard Zone Relocation Plans: To develop relocation plans using CIM plans and the forthcoming VHZR Handbook.

As of the Project's last publicly available Project Performance Report in August 2016, work on the proposed first five VHZR Plans has not yet begun, as they await completion of the VHZR handbook and National Relocation Strategy.

As of now, this project is only preparing to provide support for villages in relocating families living in hazard zones on a voluntary basis. There is also no policy nor funding in place to compensate families who are being relocated, which leaves all costs of moving, including home construction, to the village. Without a requirement

to relocate and a lack of financial support, the project may be prevented from creating a lasting national policy.

According to representatives of MNRE, the Government is responsible for providing services to relocated families, meaning that inland areas where people will be resettled are to be provided with roads, electricity, water, etc. However, there is an ongoing disagreement about the manner in which these services are to be provided. According to MNRE, service providing agencies frequently refuse to provide services to areas without a minimum number of residents already living there, and residents refuse to move to land without sufficient access to services. This stalemate threatens to undermine the Government's ability to successfully encourage families living in hazard zones to relocate voluntarily.⁹⁶

In completing the desktop review of these materials, the Office commends the diverse efforts taking place in multiple Ministries to prioritize climate change adaptation and disaster risk reduction to reduce internal displacement and other harmful impacts of climate change. However, the Office is concerned that human rights are not explicitly mentioned as a priority in the draft Relocation Strategy and other documents. More specifically, the draft strategy contains no mechanism for dispute resolution, should a village disagree with the determination that forced relocation is necessary. Similarly, there are few legal rights mentioned for villagers who might disagree with a decision of the village fono. There are also no regulations in place to provide legal recourse should future village relocation mechanisms be used for inappropriate purposes or with insufficient justification. The Office believes that human rights must be central to confronting the challenges of climate change-related migration and recommends all Ministries embrace this position.

2.7 Conclusions and Recommendations

Conclusions

It is the view of the Office that:

- Climate change impacts the full enjoyment of human rights of the Samoan people, particularly the rights to life, health, food, water and sanitation, housing, self-determination, meaningful participation, and the right to take part in or participate in cultural practices. The Office believes that these rights are extraterritorial, and nations are bound by treaty and customary law to protect the human rights of people around the world from the effects of climate change.
- Marginalized communities including women, children, the disabled, and future generations stand to bear the worst impacts of climate change in Samoa.
- The Samoan people are not responsible for causing climate change, but bear a disproportionate amount of the cost.
- Developed countries have a legal requirement, rooted in international human rights law, to mitigate the disastrous effects of climate change, and to provide sufficient financing to developing nations to adapt to these effects, including but not limited to, expanded financing to support adaptation programmes, community relocation.
- Should the existing effort to mitigate climate change through the Paris Agreement prove inadequate to stave off catastrophic impacts, as defined by the 2 degree threshold agreed to in Paris, developed nations are responsible for taking stronger actions. A perpetually inadequate response would constitute a significant violation of the human rights of the Samoan people.
- Developed countries are legally responsible for the impact of their policies on climate change, including the continued subsidization of fossil fuel companies, and the lack of consequences for companies that have allegedly been misleading the international community about the science of climate change for decades.

⁹⁶ Information gathered from a consultation with the PUMA division of MNRE on April 4, 2017

Table of Recommendations

Recommendation	Lead Ministries	Timeline
The Ministry of Foreign Affairs and Trade (MFAT) and the MNRE should embrace a human rights-centric approach to all international negotiations on climate change and all national climate change policies and programmes.	MFAT & MNRE	Now
The GoS should ratify ICESCR and its relevant optional protocols in full and without reservation.	Parliament	6 Months - 1 Year
MNRE and MWCSO, with support from the Office, should jointly develop institutional safeguards to defend the human rights of the Samoan people in all climate change adaptation and mitigation projects, including relocation and resettlement efforts.	MNRE & MWCSO	1 Year
MWCSO should be explicitly tasked with preserving human rights through its participation in all climate change adaptation projects and programmes.	MWCSO	Now
The GoS should consider an amendment to Article 15 of the Constitution of Samoa that proclaims a human right to a healthy environment and the rights of future generations.	Parliament	18 Months
MFAT should consider embracing the position that any backtracking from announced climate policy commitments by developed nations would constitute a violation of the human rights of the Samoan people.	MFAT	Now
Parliament should expeditiously give proper attention to both the 2015 and 2016 SHRRs provided by the Office.	Parliament	6 Months
MNRE, Electric Power Corporation (EPC), and Ministry of Works, Infrastructure and Transportation (MWTI) should jointly create a national relocation service provision plan, which will codify the responsibility of the government to provide services to areas where hazard zone communities will be relocated to in advance of resettlement.	MNRE, EPC, & MWTI	1 Year

PART 3. NATIONAL PUBLIC INQUIRY INTO FAMILY VIOLENCE: OVERVIEW

3.1 What is a National Public Inquiry?

The Ombudsman Act gives the Ombudsman wide-ranging duties and powers to promote and protect human rights in Samoa. One of its human rights functions is to “inquire into widespread, systemic or entrenched situations or practices that violate human rights”.⁹⁷ This can take the form of a ‘National (Public) Inquiry’. A National Public Inquiry is the most powerful tool a NHRI has, to look into complex human rights problems with the participation of the general public. It is done with precautions where necessary to ensure that vulnerable people are not hurt in the process.

It has both fact finding and educational roles and has been used to great success by NHRIs globally. Combined with the unique nature of NHRIs, the process has the potential to address and resolve wide-spread human rights issues in a manner no other approach could achieve.

3.2 Focus of the first National Public Inquiry

3.2.1 Focus

Samoa’s first National Public Inquiry will be on “Family Violence or Violence in the Samoan home” be it in the extended communal setting or the small unit (the Inquiry).

The primary focus will be on women and girls with attention also on the role and impact of violence on children as they grow and develop in Samoa and on the lives of marginalized individuals.

By “Violence” we mean physical, sexual, emotional or other forms in conformity with existing legal definitions of violence.⁹⁸

3.2.2 Objectives

The Objectives of the Inquiry are:

1. Identify and analyse the experiences and causes of family violence through personal testimonies, consultations and research;
2. Hear under appropriate condition from those affected by family violence on the impact of violence on their lives;
3. Promote collaboration as a national community to examine family violence in our society and to determine how to best address it;
4. Raise public awareness and provide human rights education on family violence; and
5. Identify (remedial) actions to ensure better understanding and enjoyment of human rights ideals and processes.

⁹⁷ Ombudsman Act 2013 s. 34

⁹⁸ Family Safety Act

3.3 Why Family Violence?

Family Violence is a serious issue in Samoa. It is no secret that there is a widespread increase of domestic violence against women and children but also an unpleasant rise of domestic violence of young girls in our country.

In 2014-2015, the Office carried out the first ever comprehensive review of human rights in Samoa. An outcome report- the SHRR 2015 was subsequently produced and submitted to Parliament for scrutiny in June 2015. One of the areas highlighted in the SHRR 2015⁹⁹ was violence against women, girls and children.

Data collected by the Office for the purposes of the SHRR 2015 showed that a total of 39%¹⁰⁰ of participants in the Office Survey 2014-2015 reported seeing abuse against women and girls in their village in the previous year. Over one-third (34%) of Survey participants witnessed domestic abuse against a child in the past year within the family or village.¹⁰¹ Disturbingly, although not asked directly, a number of School Survey 2014-2015 participants indicated that sexual abuse and incest are taking place. This was corroborated by the Ministry of Police (MoP) and Court records indicating a relatively high number of offences of incest and sexual offences affecting children.¹⁰² Also, since the establishment of the Samoa Victim Support Group (SVSG) House of Hope, SVSG has housed over 100 children who have been victims of incest. The SHRR 2015 also confirmed data collected by the Samoa Family Health and Safety Study in 2007 indicating that ‘almost half of women surveyed (46.6%) aged 15-49 reported experiencing physical and/or emotional and/or sexual violence by an intimate partner.’¹⁰³ Although these acts of sexual abuse and incest are forbidden within Samoan laws and culture, this is an issue that persists and the Office is concerned that it is becoming increasingly common.

In 2005, the United Nation’s (UN) Committee on the Convention on the Elimination of Discrimination against Women (CEDAW) in its concluding comments during Samoa’s first CEDAW review recommended for Samoa to put in place without delay a comprehensive strategy to prevent and combat all forms of violence against women, including domestic violence. Such a strategy should include measures, including legislation, to prevent violence against women, provide protection, support and rehabilitation services to victims, and punish the offenders.¹⁰⁴ In 2006, the UN Committee on the Rights of the Child in its concluding observations noted that while Samoa has undertaken activities to prevent and combat child abuse, the Committee was concerned at the persistent occurrence of child abuse.¹⁰⁵ The Committee recommended investigating cases of domestic violence, ill treatment and abuse of children and undertaking studies on domestic violence in order to understand the scope and nature of these practices, adopt adequate measures and policies and contribute to changing attitudes. In 2011, similar recommendations were made by the UN Human Right’s Council during Samoa’s first UPR to ensure steps were taken to address domestic violence (especially traditional attitudes towards domestic violence).¹⁰⁶

There has been a great amount of support over the years amongst Government, Non-Government Organisations (NGO), community and international partners to produce and implement effective measures to address this issue. Examples of these initiatives include the establishment of the Domestic Violence Unit (DVU) within the MoP, the Family Court, the Family Safety Act 2013 and amendments to the Crimes Ordinance 1961.¹⁰⁷ The MWCSO and other organizations, implemented various community awareness and education programmes

99 Total number sampled-2515. Age group 10-88. State of Human Rights Report 2015.

100 See Ibid above at pg 14.

101 See Ibid above at pg 20.

102 See Ibid above at pg 23.

103 See Ibid above at pg 12.

104 <http://www.mwcsd.gov.ws/images/stories/PUBLICATIONS%20WEBSITE/New-update%202013/CEDAW%20&%20CRC%20Concluding%20Comments/CEDAW%20Concluding%20comments.pdf>

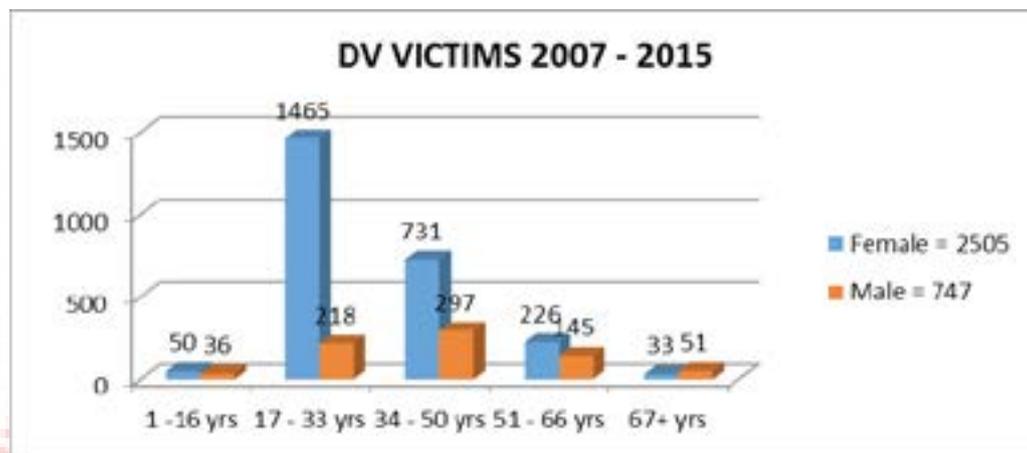
105 CRC/C/WSM/CO/1 29 September 2006, http://www2.ohchr.org/english/bodies/crc/docs/co/CRC_C_WSM_CO_1.pdf

106 <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G11/146/32/PDF/G1114632.pdf?OpenElement>, http://www.samoaoobserver.ws/en/23_12_2015/local/613/Sex-predator-dad-jailed--Justice-Vui-revives-call.htm, http://www.samoaoobserver.ws/en/31_08_2016/local/10651/Prison-for-rape-of-12-year-old.htm, http://www.samoaoobserver.ws/en/03_03_2016/local/3186/%E2%80%98Silent-epidemic%E2%80%99-discussed-at-Magiagi.htm

107 The Crimes Act 2013 has increased the maximum penalties for most sexual offences e.g attempted rape increased from 10 to 14 years, sex with a minor under 12 years old increased from 7 years to life. Sexual violation now includes rape and unlawful sexual connections. The amendments also removes exemption of marital rape.

on domestic violence, which were publicized through, inter alia, television and radio talkback shows and in schools, youth groups and village communities. Those initiatives were aimed at disseminating information, educating, and enhancing public understanding at all levels of society on the scourge of domestic violence and gender discrimination. With assistance from the United Nations Population Fund (UNFPA), the Men against Violence Advocacy Group had been established to lead advocacy and to campaign, targeting men and village leaders to join forces to eliminate violence and gender discrimination.

Despite these initiatives and many efforts over the past years to address the issue of domestic violence against women and girls, still violence remains prevalent in Samoa and is increasing with serious cases resulting in the death of women. Data below from the DVU shows the increase of “reported” domestic violence cases of female victims between the ages of 17-33 between the years of 2007-2015. These numbers were cases reported only to the Police headquarters in Apia and do not include cases reported to police outposts.¹⁰⁸ This indicates that violence against women is endemic and widespread in Samoa.



There is concern and international pressure to address domestic violence especially with regards to women, girls and children. This was evident in Samoa’s second UPR last year when the UN Human Rights Council recommended to Samoa to continue to take active steps to implement measures aimed at combating and preventing domestic violence.¹⁰⁹

The media has been flooded with reports of cases on domestic violence particularly with physical and sexual abuse of women and sexual abuse or incest involving young girls and children. At the same time there is strong concern from the public on the severity and increase of domestic violence.¹¹⁰

The concerning increase and widespread pattern of domestic violence in Samoa has prompted the Office to make Family Violence the focus of its first National Public Inquiry.

3.4 How will the National Public Inquiry be conducted?

3.4.1 Inquiry Commissioners

The Inquiry Commissioners are the internal drivers and external face of the Inquiry. They are ultimately responsible, on behalf of the Office, for the conduct of the Inquiry and for its report and recommendations. They collectively lead the whole inquiry team, with the chairperson of the inquiry individually leading the inquiry member. Each inquiry commissioner is a person with the required qualities:¹¹¹

¹⁰⁸ Data shown is only on cases reported to the main Police Station in Apia, it does not include reported cases in police outposts and unreported cases.

¹⁰⁹ Draft Report of the Working Group on the UPR, A/HRC/WG.6/25/L.3, 9 May 2016

¹¹⁰ http://www.samoobserver.ws/en/06_08_2016/local/9652/Father--slammed--for-sex-betrayal.htm; <http://www.radionz.co.nz/international/pacific-news/280464/samoan-brothers-jailed-for-incest>; http://www.samoobserver.ws/en/16_08_2016/local/10040/Sexual-crimes-continue-to-rise.htm

¹¹¹ Manual on Conducting a National Inquiry into Systemic Patterns of Human Rights Violation, APF & Raoul Wallenberg Institution of Human Rights and Humanitarian Law, Sept 2012, See pages 35-36

- Recognized integrity
- Political independence
- Existing expertise and experience in at least one area to be covered in the inquiry
- Commitment to the inquiry process
- The ability to allocate the necessary time and energy to the conduct of the inquiry and its completion on time and within budget
- The ability to work collaboratively in a team

For the purposes of this inquiry, 3 distinguished external proficient individuals have been selected as Inquiry Commissioners to assist the Ombudsman. The Commissioners are:

- i. Maiava Iulai Toma, Ombudsman and Chairman;
- ii. Hon. Tolofuaivalelei Falemoe Leiataua, former Parliamentarian (Member);
- iii. Professor Tagaloatele Peggy Dunlop, Professor of Pacific Studies, Auckland University of Technology (Member); and
- iv. Leasiolagi Dr. Malama Meleisea, Director, Centre for Samoa Studies, National University of Samoa (Member)

3.4.2 Terms of Reference

The Terms of Reference is:

1. To inquire into and identify those most vulnerable to family violence and the nature of the violence experienced;
2. To inquire into and determine the causes and factors contributing to the occurrence of family violence;
3. To inquire into and identify the impact of family violence;
4. To inquire into and scrutinise the relevance, effectiveness and scope of existing programs and services involved in addressing the problems faced by survivors of family violence;
5. To inquire into existing structures and institutions (e.g church and Fono a Alii ma Faipule) with potential to contribute to identifying to solutions and effective actions to curb family violence; and
6. To report on its findings and make appropriate recommendations.

3.4.3 Methodology

The success of this Inquiry is dependent on the participation of the Samoan population.

This is because it is intended to be an open non- judgmental discussion of views and attitudes held by us all who live with the problem of family violence in this country. The idea is for people to freely voice their thoughts and views on the issue.

The Inquiry will utilize the following different methods of collecting information/evidence:

a) **Desktop Research:**

This involves collecting and analysing data/statistics, reports, activities/programs etc on domestic violence which Government, NGOs and anyone else have worked on. The Office began its desktop research last year in October.

b) **Consultations:**

The main objective of the consultation process is to strengthen the efficacy of public hearings and considerations for the final Inquiry Report. While the final form and content of the final Report cannot be determined at the outset, the Office anticipates that the consultation process will help to stimulate discussions by everyone (stakeholders, community, individuals, survivors, perpetrators etc) on the main causes and solutions to the issue and highlight aspects for consideration and discussion by the Inquiry Commissioners in the final report.

The Office embarked on a three-phased consultation process as follows:

Phase One: Consultations with NGOs, Government Ministries, international partners and other Stakeholders.

This phase is completed. Consultations were carried out from October to November 2016. These were initial consultations with stakeholders who had done or doing any related work in combating family violence in Samoa. To help shape the findings of the Inquiry to be truly representative, input from a variety of stakeholders was solicited on key topics related to the inquiry.

The Office was also able to identify relevant NGOs and Government Ministries to be invited to appear before the Inquiry Commissioners to share their experiences and observations on the issue of concern.

Below is the list of organisations and government ministries that were consulted.

NGOs	Government Organisations	Developing Partners	Media
Faataua le Ola	Ministry of Women, Culture and Social Development	UN Women	Newsline
Samoa Victim Support Group	Ministry of Police (DVU)	UNDP	
	Samoa Prisons and Corrections Services	UNFPA	
	Ministry of Justice and Court Administration (Parole and Drugs and Alcohol Court)	UNICEF	
	Samoa Bureau of Statistics	Australia High Commission	
	National Health of Services	New Zealand High Commission	
	National University of Samoa		

Other Ministries and NGOs were contacted numerous times for meetings but we never meet due to their busy schedule. They are:

- Samoa Family Health Association
- Samoa Umbrella for NGO
- Samoa Red Cross
- Ministry of Health
- Samoa Observer

Phase Two: Consultations with main Community Bodies

This phase is completed. Consultations were carried out from February to March this year. These consultations were with main community bodies such as:

- Village Representatives (Sui o Malo, Sui o Nuu & Sui Tamaitai o Nuu)
- Church Leaders and other religious organizations as needed
- Youth Representatives (Sui Tupulaga Talavou o Nuu)
- SVSG Village Representatives
- SAMOA Fa'afafine Association

The main focus was to inform them about the Inquiry and encouraging them to come forward and give information/evidence to the Inquiry Commissioners or submit submissions on their role in the community in the protection of family members from domestic violence in Samoa or their views and experiences on the issue etc.

The consultations were also a good opportunity to rally for the support of these main stakeholders in organising of the village consultations and any support that they may be able to render throughout the inquiry process.

Phase Three: Consultations with Villages

This phase is also completed. Consultations were carried out from April to May this year. It focused solely on informing and initiating discussions with members of the community on the Inquiry and collecting their views on the issue.

There were predetermined questions based on the objectives of the Inquiry. Some of these issues are as follows:

- What are the causes of family violence?
- Who are the most vulnerable to family violence?
- What are impacts of family violence?
- What should be the role of the community and who should enforce the laws to ensure family violence is eliminated in your village?
- Recommendations to address the issue.

This phase also assisted the Office in identifying any possible witnesses and survivors of family violence who are willing to provide submission in private or in public to the Commissioners.

The total number of villages that were consulted was 12 in Upolu including Manono Island and 5 in Savaii.

c) Submission of written submissions

The Commission will accept written submissions from interested parties. This is another option open to survivors to tell their stories in complete anonymity. The call for written submissions will start soon.

d) Public Hearings

Public hearings will provide the public or any interested party to speak directly to the Inquiry Commission as survivors, perpetrators, stakeholders or other relevant capacity. The public hearing will commence in September.

The Commission will be going out to different places in Upolu, Savaii, possibly Manono and Apolima depending on the extent of interest to appear before the Commission.

Sittings of the Commission will normally be open to the general public but it will sit in closed hearings where anonymity and issues of sensitivity demand.

It is important for survivors or those experiencing family violence to know that they will be able to come forward in a secure environment to tell their stories without fear of adverse repercussion upon them. It is very important also for the Commissioners to hear the voices of the survivors themselves to gauge the true impact of family violence.

Perpetrators who wish to express views on why things happen as they do will be very welcome to contribute to the dialogue. The objective of the process is to understand, not to judge.

3.4.4 Timeframe

The Inquiry will be carried out over a span of twelve (12) months starting January to December 2017. The final Inquiry report will however be finalised, published and provided to Parliament in June 2018.

3.4.5 Budget

The Office was fortunate to have the support of international donors which have kindly provided financial support. They are UN Women, UNDP, Asia Pacific Forum for NHRIs and the Commonwealth Secretariat. Despite these funding there is still a short of budget in which we are still urging Government for its support.

3.5 Possible results of the National Public Inquiry

The Inquiry will only make findings and form recommendations when it has heard and considered all of the evidence it receives. However, it is helpful to consider some of the possible findings at the outset to inform the broad direction and framework of the inquiry, and for this to be considered throughout.

It is clear from the findings of the SHRR 2015 that many see family violence as a cultural norm. If the Inquiry confirms this, it will want to know why and how this has become the situation in Samoa and it would want to make recommendations to address this belief.

The Inquiry will foster a national conversation on family violence, to reveal the full dimensions of our domestic violence problem. Once the true scale and nature of family violence is established through the Inquiry, only then can we decide as a nation whether we are happy to continue with the status quo or whether reform is necessary. The ultimate solutions will therefore be formed by consensus and nationally owned.

A further key area for potential findings arising from the Inquiry is in relation to the services and support available to survivors of family violence. The under-reporting of cases of family violence is likely to be a significant issue and the inquiry must look into the causes and barriers that exist.

The Inquiry may also expose existing institutional capacities and opportunities in village governance and social organisation that could properly be utilized to combat family violence itself or educate against it.

Responsibility for implementing the inquiry recommendations is likely to be spread among the Government, village councils and the churches. All will be given the opportunity to present their views and evidence to the inquiry.

It is hoped that the Inquiry will reveal the full dimensions of the situation in terms of the severity and extent of our family violence problem, human rights law and provide a human rights analysis and human rights recommendations. No issue will be ignored by the Inquiry and submissions will be welcomed on all forms of family violence. The final Report will, however, focus on women and girls and other priority issues that come to light.

The public process of the Inquiry will ensure that the issue itself becomes better known and that its dimensions are better understood. The media can raise the profile of little known and little understood issues. That in turn encourages greater political attention to the issue and promotes pressure for an adequate response and for changes in public policy and practice.

3.6 Conclusion

Violence in our families is a serious problem. It is extensive and may even be fortified by attitudes that are embedded in our traditional communal society.

The Commissioner believes Samoa can forge a solution for itself in Domestic Violence if it approaches it as a societal problem of national concern to be solved not by the Government alone but by the Government in strong practical collaboration with traditional village councils, churches and others.

In a nutshell, the National Public Inquiry hopes to facilitate (1) a comprehensive understanding of Domestic Violence in Samoa and (2) the formulation of workable countermeasures that the Samoan Community can embrace.

Samoa needs to start a dialogue of self – examination now and decide to do what it needs to do to rid itself as much as possible of violence in the home.

Appendix 1: Scientific Projections of Climate Change Impacts in Samoa¹¹²

Measurement	Projected Changes	Confidence
Annual Mean Temperature	Through 2100, the latest Global Climate Model (GCM) indicates an increase in annual mean temperature. All Representative Concentration Pathways (RCPs) project the same.	Very High
Extremely High and Low Temperatures	Coupled Model Intercomparison Project (CMIP5) models indicate that the temperatures on extremely hot days and extremely cold days are projected to increase by about the same amount as average temperature. The frequency of extremely hot days is also expected to increase, and the frequency of extremely cool days is also expected to decrease.	Very High
Frequency and Intensity of Extreme Rain	CMIP5 models predict an increase in the frequency and intensity of extreme rainfall events.	High
Mean Annual Rainfall	CMIP5 models show a wide range of possible changes in mean annual rainfall, including both a decrease and an increase. There is no consensus between models and many of the models project little change.	Low
Drought Frequency	The overall proportion of time spent in drought is expected to remain unchanged in all RCP scenarios except for one, which projects a slight decrease.	Low
ENSO Pattern	The future of El Niño Southern Oscillation (ENSO) patterns is unclear. Models project no significant change in the frequency or intensity of El Niño or La Niña, with low confidence in the ability to predict.	Low
Seasonal Temperature Changes	Relative to 2016, RCP 4.5 and 6.0 scenarios indicate up to a 2.0°C temperature rise from January to May, and a more consistent 0.9°C temperature rise from June to December. The worst case RCP 8.5 at end-of-century suggests up to a 3.5°C increase in February to April, and about 2.0°C temperature rise during the rest of the year	Medium
Dry Season Duration	Historic data shows no change, with a slight decrease that is not statistically significant.	Low
Potential Evapo-transpiration	Not calculated due to lack of relative humidity and wind speed projections. However, temperature rise allows a rough projection of an increase of 3%-5% by mid-century.	Medium
Seasonal Soil Moisture Deficits	Not determined, but should closely mirror potential evapotranspiration.	N/A
Relative Humidity	Historic data shows stable levels over the past century, but with progressive decreases from 2000-2016 by approximately 2%. No clear projection for the future.	Medium
Specific Humidity	Projected to increase in the region, but with insufficient data for localized projections	Medium

112 Australian Bureau of Meteorology and CSIRO. (2011). Climate Change in the Pacific: Scientific Assessment and New Research. Volume 2: Country Reports. Retrieved from <http://www.pacificclimatechangescience.org/wp-content/uploads/2013/09/Volume-2-country-reports.pdf>

Changing Seasonal Rainfall	Median model projections to 2030 are for an increase of up to 20% in April to August, a decrease from January to March, and no change from August to December. The variability of rainfall will increase, both in terms of single event extremes, and inter-annual variability. This change in variability is currently indeterminate.	Medium, but only to 2013
Tropical Cyclone Frequency	There is consistency among models that the frequency of cyclones in the region is expected to decrease.	High
Tropical Cyclone Intensity	There is consistency between models that the intensity of tropical cyclones, including mean maximum wind speed and rainfall rates will increase.	Medium
Sea Level Rise	Mean sea level is projected to continue to rise through the 21st century. The CMIP5 models simulate a rise of between approximately 7–17 cm by 2030 (very similar values for different RCPs), with increases of 40–87 cm by 2090 under the RCP8.5 (Figure 12.11 and Table 12.6).	Very high
Sea Surface Temperatures	The historic mean annual sea surface temperatures near Samoa has increased by 0.3°C. They are projected to increase further, but the rate is unclear, and is closely linked to the frequency and intensity of El-Niño.	Very High
Ocean Acidification	Over the last 20 years, the pH of the equatorial south Pacific has decreased from about 8.10 to 7.95, faster than the global average. Since this is a log scale, the rate will decrease, to about 7.82 by mid- to late century.	Very High
Aragonite Saturation Index	All models show that the aragonite saturation state, a proxy for coral reef growth rate, will continue to decrease as atmospheric CO ₂ concentrations increase. Under RCPs 8.5 and 4.5 the median aragonite saturation state will decrease to 3.5 by around 2030. In RCP 8.5 the index continues to strongly decline thereafter to values where coral reefs have not historically been found (< 3.0). Under RCP 4.5 the aragonite saturation plateaus around 3.2. Under RCP 2.6 the median aragonite saturation state never falls below 3.5.	Very High
Coral Bleaching Events	Increased frequency and intensity. The ABoM estimates are related to changes in sea surface temperature (SST). Overall there is a decrease in the time between two periods of elevated risk and an increase in the duration of the elevated risk. If severe bleaching events occur more often than once every five years, the long-term viability of coral reef ecosystems becomes threatened.	Very High

Appendix 2: Relevant Points from the Guiding Principles on Internal Migration

Principle 3 states that, “National authorities have the primary duty and responsibility to provide protection and humanitarian assistance to internally displaced persons within their jurisdiction.”

Principle 6 states that, “Every human being shall have the right to be protected against being arbitrarily displaced from his or her home or place of habitual residence,” and, “The prohibition of arbitrary displacement includes displacement: in cases of large-scale development projects, which are not by compelling and overriding public interests.”

Principle 7 states that:

- (1) “Prior to any decision requiring the displacement of persons, the authorities concerned shall ensure that all feasible alternatives are explored in order to avoid displacement altogether. Where no alternatives exist, all measures shall be taken to minimize displacement and its adverse effects.
- (2) The authorities undertaking such displacement shall ensure, to the greatest practicable extent, that proper accommodation is provided to the displaced persons, that such displacements are effected in satisfactory conditions of safety, nutrition, health and hygiene, and that members of the same family are not separated.
- (3) If displacement occurs in situations other than during the emergency stages of armed conflicts and disasters, the following guarantees shall be complied with:
 - (a) A specific decision shall be taken by a State authority empowered by law to order such measures;
 - (b) Adequate measures shall be taken to guarantee to those to be displaced full information on the reasons and procedures for their displacement and, where applicable, on compensation and relocation;
 - (c) The free and informed consent of those to be displaced shall be sought;
 - (d) The authorities concerned shall endeavour to involve those affected, particularly women, in the planning and management of their relocation;
 - (e) Law enforcement measures, where required, shall be carried out by competent legal authorities; and
 - (f) The right to an effective remedy, including the review of such decisions by appropriate judicial authorities, shall be respected.

Principle 8 states that, “Displacement shall not be carried out in a manner that violates the rights to life, dignity, liberty and security of those affected.”

Principle 9 states that, “States are under a particular obligation to protect against the displacement of indigenous peoples, minorities, peasants, pastoralists and other groups with a special dependency on and attachment to their lands.”

Principle 18 states that,

- “(1) All internally displaced persons have the right to an adequate standard of living.
- (2) At the minimum, regardless of the circumstances, and without discrimination, competent authorities shall provide internally displaced persons with and ensure safe access to: Essential food and potable water; Basic shelter and housing; Appropriate clothing; and Essential medical services and sanitation. Special efforts should be made to ensure the full participation of women in the planning and distribution of these basic supplies.”

Principle 22 states that, “Internally displaced persons, whether or not they are living in camps, shall not be discriminated against as a result of their displacement in the enjoyment of the following rights:

- (a) The rights to freedom of thought, conscience, religion or belief, opinion and expression
- (b) The right to seek freely opportunities for employment and to participate in economic activities;
- (c) The right to associate freely and participate equally in community affairs;