



OMBUDSMAN
— NHRI SAMOA

ANNUAL REPORT

2016/2017

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Ombudsman Statement

It is my pleasure to submit this Annual Report for Financial Year Ending 2017 on the activities undertaken by my Office for the fiscal year under review. A notable feature has been gradual expansion in the work of one of the additional functions mandated for the Office, to investigate complaints received against law enforcement officials by the Special Investigations Unit (SIU). Progress is being made in the more efficient reviewing of cases investigated by the Professional Standards Unit (PSU) of Police and in improving procedure for the oversight of cases where timely and efficient resolution of complaints is highly desirable. My Office continues to work within the means with which we are provided to meet its three principal functions: To investigate and resolve complaints about Government agencies and corporations; to oversee or to investigate where appropriate complaints about law enforcement officials; and as the National Human Rights Institution (NHRI) of Samoa to promote and protect human rights.

The formation of partnerships has been a major concentration in the work agenda of this Office in the past year. This is reflected in many of our activities across the 3 functions with emphasis on cooperation and collaboration with Government agencies to ensure that complaints and queries by members of the public are resolved satisfactorily. In addition, we work alongside local and with international partners in various projects and activities which promote human rights in Samoa.

Section 40 of the Ombudsman Act 2013 require the office to submit a State of Human Rights Report (SHRR) each year. The 2017 SHRR focuses on the impact of climate change on the full enjoyment of human rights in Samoa including the right to life, health, food, water and sanitation, adequate housing and many other basic and fundamental rights. The report recognises the Government's efforts consistent with the international Paris Agreement to advocate for robust programmes to support mitigation and adaption efforts in this country. International responsibility for the impact of climate change on particularly vulnerable countries is not only a moral issue; it is a human rights issue. The NHRI of Samoa considers it appropriate to put climate change in a human rights perspective. SHRR 2017 is a beginning effort to cast the impact of climate change on Samoans in human rights

terms and to encourage Government to embrace a “human rights approach” to climate change policies and projects.

I salute the various initiatives and activities that show Government’s continuing commitment to the promotion and protection of human rights for all Samoans including its recent Universal Periodic Review (UPR) exercise and the recent ratification of the CRPD.

My staff and I remain committed to the impartial discharge of our mandates and to give of our best for the dignity, protection and equality of all.

A handwritten signature in dark ink, appearing to read 'Maiava Iulai Toma', with a large, stylized initial 'M'.

Soifua ma ia Manuia
Maiava Iulai Toma

Section One: Our Role

1.1 Mandate

The work of the Office is mandated by the *Ombudsman (Komesina o Sulufaiga) Act 2013* (the Act).

1.2 Vision:

“The promotion of integrity in governance, the protection and promotion of human rights in Samoa and equal and fair treatment of people”

1.3 Mission:

- » To provide good leadership, management of systems, processes, efficient support and coordination for the successful implementation of the Office’s Work Program
- » To enhance the lawful delivery of State Agency mandates to the reasonable satisfaction of members of the public.
- » To promote and protect human rights and freedoms as the National Human Rights Institution (NHRI).
- » To provide effective oversight and address misconduct of agencies exercising the coercive powers of the State and to conduct special investigations as may be authorized.

1.4 CoreValues

Our work will be constantly guided by Core Values that we are committed to, that foster integrity in governance and encourage the promotion of human dignity and an underlying respect for *Fa’a Samoa*. These are:

- » Honesty, Integrity and Impartiality
 - ✓ We are ethical, honest and law-abiding in everything we do.
 - ✓ We respond to complaints without bias and we do not take sides.
 - ✓ We provide impartial advice without fear or favour and make decisions on their merits.
 - ✓ We are independent.
- » Ethics, Fairness and Dignity
 - ✓ We have the highest ethical standards.
 - ✓ We treat people equitably.
 - ✓ We value respect and diversity.
- » Accessibility, Accountability and Transparency
 - ✓ We are accessible to all people.
 - ✓ We are transparent and accountable for our actions.
- » Efficiency and Effectiveness
 - ✓ We make efficient use of our resources.
 - ✓ We achieve good results in an economic way.

- » Consistency, Responsiveness and Diligence
 - ✓ We respond to complaints quickly. If we cannot help, we will explain why and, if possible, suggest another action.
 - ✓ We produce timely and high quality work.
 - ✓ We develop our skills to improve service and become a catalyst for change in promoting good governance and human rights.
- » Culture and Rule of Law
 - ✓ We respect and value *Fa'aSamoa*.
 - ✓ We operate within the laws of the Independent State of Samoa.

1.5 Functions

The Office is an independent office with responsibilities in three (3) areas:

- i. Conventional Ombudsman Office (Good Governance);
- ii. National Human Rights Institution(NHRI) of Samoa;
- iii. Special Investigation Unit.

Conventional Ombudsman

The conventional Ombudsman's Office functions to investigate complaints against public bodies, usually to ascertain whether the action complained of:

- appears to have been contrary to law;
- was unreasonable, unjust, oppressive, or improperly discriminatory, or was in accordance with a rule of law or a provision of any enactment or a practice that is or may be unreasonable, unjust, oppressive, or improperly discriminatory;
- was based wholly or partly on a mistake of law or fact; or was wrong.

The Ombudsman serves to protect the individual against improper and unreasonable administrative actions of government. His functions and powers are given to him to be exercised in the interests of good governance and for citizens who otherwise would be relatively powerless against a governmental agency with which they may take issue on matters of vital interest to him.

The Ombudsman may refuse to investigate a complaint if there is an adequate alternative remedy or right of review available, or having regard to all circumstances of the case, he considers any further investigation unnecessary.

The Ombudsman may also decide not to investigate a complaint on any matter of which there has been complainant knowledge of more than twelve (12) months.

The Ombudsman ordinarily may conclude and recommend:

- matter be referred to the appropriate authority for further consideration;
- an omission be rectified;
- a decision be cancelled or varied;

- any practice on which a decision, recommendation, act, or omission was based be altered;
- any law on which a decision, recommendation, act, or omission was based be reconsidered;
- reasons be given for a decision; and
- any other steps be taken.

The Ombudsman cannot direct remedial action. He may only recommend remedies he considers appropriate to the agencies concerned.

National Human Rights Institution (NHRI)

The NHRI functions to promote and protect human rights, dignity and respect in Samoa. These Functions include:

- Inquire & report on human rights violations;
- Monitor & promote compliance with international and domestic human rights law;
- Participate with the court's permission in proceedings as a friend of the court or party to human rights issues;
- Consult, engage & co-operate with civil society organizations, business organizations and academic institutions;
- Advise on matters referred to the Ombudsman by government;
- Consult, engage & co-operate with other national, regional and international human rights bodies;
- Visit places of voluntary and involuntary confinement or detention;
- Report to Parliament each year on the status of human rights in Samoa.

In the event a NHRI inquiry finds evidence of human rights violations, the Ombudsman's report may include any or all of:

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

These report findings and recommendations are to be made public and Parliament is to be provided with a copy.

The Ombudsman does not have the mandate at the present time to investigate and resolve individual complaints of a human rights violation. It is however intended for the Office to expand over time to incorporate this mandate.

Special Investigations Unit (SIU)

The SIU functions to investigate complaints against a police officer, prison and corrections officer or an officer of other prescribed disciplined force.

The unit functions to:

- i. receive, investigate and monitor any complaint;
- ii. monitor the progress of complaints made directly to a discipline force;
- iii. advise and make recommendations to a discipline force on how to effectively dispose of complaints made directly to the discipline force;
- iv. consult and engage with a discipline force relating to complaints to that force, as the Ombudsman considers appropriate.

Section Two: Staff

The Office new mandates warranted for additional staff who were recruited in 2016.

1. **Director of Human Rights.** The position is filled by an existing employee who was the Legal Officer for Good Governance and Human Rights
2. **Director of Good Governance.** The position is filled by an existing employee who was the Principal Good Governance Officer;
3. **Director of SIU.** A senior prosecutor from the National Prosecution Office;
4. **Good Governance and Human Rights Legal Officer.** A senior lawyer from the Office of the Attorney General; and
5. **SIU Officer.** A senior police officer from the Ministry of Police.

The Office is pleased to have on board proficient staff to help implement the Office's new mandates.

Section Three: Office Policies and Procedures

The following foundational policy and structure is in place.

- 1) **Strategic Plan 2016-2020:** The Strategic Plan describes how the Office fulfils its mandate and addresses priorities for the next four years. An Output Estimates and Projections Report 2016-2020 was also produced which outlines the financial and operational plan to put policy and strategy into practice to deliver the Strategic plan. The advantage of this Output based approach is that it:
 - Increases efficiency in spending to efficiently achieve strategic priorities.
 - Provides an easy and clear method for review and approval.
 - Ensures effective control of the flow of money and of ongoing work.
 - Depoliticizes the budget itself and shifts focus to the Agency priorities.
 - Present more useful information on service delivery, improving transparency and accountability.
 - Requires participation across the whole Organisation.
 - Integrates the budget more closely with programs.
 - Strengthens the focus on operational efficiency and budget management.

The Plan and Output Estimates and Projects has been finalised ending last year. It is hoped that this Plan will be able to effectively and efficiently implement its prioritised work for the next four years.

Section Four: Highlights of work undertaken during the year 2016 - 2017

Conventional Ombudsman (Good Governance)

The Office continues to receive and deal with various types of cases under its good governance function. The following selection of cases is indicative of array of cases that flow into this arm of the office and reviews that may be of interest:

Highlight of cases (in no specific order)

Land Transport Authority

Unreasonable delay

Background

Mr B complained to OMB against LTA alleging unreasonable delay and failure to act appropriately in processing compensation payment for the removal of his property from the family's customary land during road construction works.

Examination

LTA explained that deliberations with the affected villages and families (including Mr B) during the road construction had reached an agreement that only crops removed/damaged would be compensated. Mr B had already been compensated for the removal of his crops but had written again to LTA requesting further compensation for the removal of his property due to the road construction at an exorbitant claim.

Outcome

The compensation of Mr B's removed property was eventually paid at a much lower cost. The payment however, was to be transferred directly to the Public Trust Office until Mr B and his family had resolved another issue in relation to the compensation.

OMB advised Mr B of the outcome and that LTA had acted reasonably. Mr B accepted the outcome and LTA was acknowledged for the handling of Mr B's matter.

Accident Compensation Corporation

Unreasonable decision/action

Background

Ms A claimed that the expulsion of her husband from the Fugalei Market was unreasonable and unfair. Her husband was involved in an incident with a female tenant and was allegedly assaulted and injured by the other party that consequently resulted in ACCs decision for expulsion. Ms A claimed that her husband was not at fault and that the other tenant had instigated the clash. The incident was reported to and dealt with by Police. A notice of intention to investigate the complaint was forwarded to the agency.

Examination

It was found that the Market's primary rule was that "violence was strictly prohibited in the Market" and the penalty was immediate expulsion to all those involved without any consideration of who was right or wrong. Both Ms A's husband and the other tenant had violated the primary rule and as a result were both expelled. ACC also decided to allow the offenders families remain at their respective blocks and continue to sell their produce as it was their only means of income.

Outcome

OMB was satisfied with the decision especially in allowing both families to remain at their blocks instead of evicting them because of the incident. No further action was taken.

Ministry for Revenue – Customs***Unreasonable Action***Background

Mr C, an importer of wine initially complained to Customs that a certain wine retailer was under-selling wines for which Mr C was the local agent and requested that Customs investigate if any improper activity was carried out between his competitors and Customs officials in relation to the payment of correct duties. Mr C's concern was for uniform compliance and fair competition in the market place.

Examination

The outcome of Customs investigation determined that neither Mr C's competitor nor Customs officials had committed any offence under Customs legislation. However, the Ministry intended to carry out a physical examination of the next shipment of Mr C's competitor to ascertain whether quantities of the wine in the container corresponded with invoices that were submitted. The outcome did not satisfy Mr C who then requested OMB to investigate Customs practices regarding import and duty compliance.

Outcome

It was found that the figures and values in the calculations accorded with Customs documents relating to the shipments of the merchandise. Presumption of misconduct from "low prices" charged for "the wine" was not sustained. OMB noted with satisfaction that Customs had instituted appropriate surveillance measures to enhance compliance with Customs requirements and appropriate standards. OMB was still apprehensive that quantities of wine imported corresponded to quantities in invoices during the period investigated due to the lack of spot checks for irregularities.

Ministry of Natural Resources and Environment***Unfair Action/Decision***Background

Mr D complained to OMB alleging MNRE's negligence for allowing a certain plot of his family's estate to be sold while a second caveat was placed on the land. Mr D's cousin was the appointed Trustee for the family estate.

Examination

The caveat was placed on the disputed plot because it was alleged that his cousin (the Trustee) was conducting unlawful dealings by selling plots of the estate. The caveat was later removed because Mr D's lawyer did not respond to the Trustee's notice to remove the caveat within the

prescribed days. Mr D was disappointed that MNRE did not inform him on the notice to remove the caveat. A second caveat was presumably submitted by Mr D's lawyer, unfortunately there was no record of any other caveat on the disputed plot when he contacted MNRE.

Outcome

OMB was satisfied that MNRE had acted accordingly and was not negligent in the administration of duties pertaining to the complaint. Legislation stipulated that a second caveat could not be lodged except by order of the Court. That aspect of the complaint was a legal matter, meaning that it was out of OMB jurisdiction and could not be pursued any further.

Delayed Compensation/Lease payment

Background

Mr E complained to OMB alleging unreasonable delay in the payment of compensation for the taking of his family land for government purposes and the redirecting of lease payments from Bluesky and Digicel to MNRE instead of Mr E, the landowner.

Examination

MNRE had forwarded a Cabinet submission to compensate Mr E for approval. Cabinet had deferred its decision and referred the matter to the Prime Minister.

Outcome

OMB was satisfied with MNRE's explanation on significant developments that had emerged from the complaint. Mr E was advised accordingly of MNRE's effort and of his issue before Cabinet. No further action was taken.

Samoa Life Assurance Corporation

Unreasonable delay

Background

Ms F complained against SLAC alleging the unreasonable delay in the release of her mother's life assurance policy for funeral expenses.

Examination

According to SLAC, Ms F (the proposer) and her late mother (the life assured) had failed to declare certain ailments in the life policy proposal/insurance contract of Ms F's mother, thus not satisfying the terms and conditions of the agreement, which unfortunately made the contract void.

Outcome

OMB considered all the information provided by both Ms F and SLAC. OMB determined that SLAC's decision was legitimate and reasonable in declaring the insurance contract void. Ms F was advised of the outcome and SLAC was acknowledged for the assistance offered during the course of the investigation. The complaint was considered resolved.

Samoa National Provident Fund

Unreasonable Decision

Background

Mr G sought the assistance of OMB alleging an unreasonable decision by SNPF in withholding his deceased mother's contribution.

According to Mr G, his late mother, an SNPF member, had bequeathed her assets to him, her son. Mr G had processed the necessary documents to SNPF to facilitate the release of his mother's contributions when he was informed that the funds could not be withdrawn unless a guarantor could be secured for a loan that his mother had consented to guarantee. Mr G found this decision unreasonable and unjust and that the responsibility should lie with the borrower.

Examination

A notice of intention to investigate the matter was sent to SNPF. The Fund subsequently responded explaining that the matter with Mr G had been resolved.

OMB contacted Mr G who confirmed that the matter with SNPF had been settled, the borrower had found another guarantor to replace Mr G's late mother. Mr G acknowledged the assistance of OMB.

Outcome

OMB was satisfied with the outcome based on the information provided from SNPF and the confirmation of Mr G. The notice of intention to investigate was cancelled and no further action was taken. OMB informed SNPF of its decision and commended the Fund's handling of Mr G's concern.

Unreasonable Delay

Background

The Ombudsman received a complaint from Mr H against SNPF alleging the unreasonable delay in the handling of an issue concerning unpaid contributions from his former employer. According to Mr H, he had visited SNPF about 6 or 7 times to follow up on his matter and felt that he was being given the run around by SNPF staff.

Examination

A notice of intention to investigate was sent to SNPF. The Fund responded explaining that the matter had been addressed, Mr H's former employer had been contacted and that time had been granted to process the necessary payments. Mr H had also been advised on the progress of the matter. When contacted, Mr H confirmed that SNPF had advised him of the status of the matter.

Outcome

OMB was satisfied that SNPF had acted reasonably in addressing Mr H's complaint. No further action was required for this matter as it had been resolved by the relevant parties.

Samoa Water Authority

Unfair Dismissal

Background

This was a referral from the Prime Minister concerning the unreasonable termination of Mr I's employment from SWA.

Examination

SWA addressed the reasons for Mr I's dismissal on money related indiscretions. Mr I was given the opportunity to be heard during his interview with SWA and was advised to read and confirm or reject his admission statement. Unfortunately, Mr I understood the statement and consequently signed the document confirming his fate.

Outcome

OMB was satisfied with SWA's handling of Mr I's dismissal and that the complaint could not be sustained. The dismissal of Mr I was justified. The outcome of the investigation was dispatched to Mr I, SWA and the Prime Minister.

2016 - 2017

Nature of Complaints received	Details	Total
In person	Interviewed in Office	79
Letter	Complaint received in letter form	55
Telephone	Complaint received by telephone	-
Referral by Prime Minister		5
Number of Complaints investigated	Including own motion investigations	45
Complaints referred to other Agencies	Including complaints out of jurisdiction - OoJ)	27
Complaints against Ministries	Not including law enforcements, SOE's & NGO's	14
Complaints against SOEs	Not including Govt Ministries & NGO's	27
Complaints against law enforcement offices		10

- The duration of an investigation varies depending on the seriousness and complexity of the complaint.
- Complaints against Police are now handled by the Special Investigations Unit (SIU).

Human Rights

The following are some of highlights of the work by the human rights team for the July 2016 - June 2017 financial year:

Inspection of Places of Detention

The Office carried out its third inspections on 22-23 August 2016 specifically into Vaiaata Prison and Police Custodies in Savaii (Tuasivi, Fagamalo, Asau & Vaito'omuli).

The Commissioners for Police and Prisons were given prior notice of the visits and requested their usual support. The inspections team met first with Officers in Charge of each detention facility to discuss the purpose of the visit before carrying out the physical inspections of the facilities.

The purpose of the inspections were not only to follow up on the recommendations made in the 2015 Inspections Report but also to see the current status of the facilities.

The Ministry of Police is commended for the quick response to one of the recommendations made in the 2015 Inspections Report concerning the state of the Tuasivi cells which detains custodies. As noted in the 2015 Report, the cells were unfit and appalling for detained individuals who have yet to be tried before the law to prove whether or not they are innocent. Renovations were done to these cells which included: painting of the cells, functional toilet inside the cells, and installation of 2 sinks for drinking water and washing, and secured fence around the cells so the custodies can have access to fresh air and stretch. Renovations to the Fagamalo cells were also complete and in operational.

The Samoa Prisons and Corrections Services is also commended for its efforts to start addressing recommendations from the 2015 Report. This was evident during the inspections and also interviews with the prisoner's themselves who attested to the improvement in food, health care services and rehabilitation programs. Despite these improvements, there were some issues from the last inspections that still existed in the Vaiaata prison such as: lack of access to clean water, overcrowding and need for separation of juveniles from adult prisoners.

Further new issues which raised from these inspections include: incomplete record keeping in police outposts and the detention of Vaiaata prisoners in Police Custody.

The Report is still in draft and yet to be finalised due to technical difficulties.¹

National Public Inquiry into Family Violence

Mandate to carry out Inquiries

The Ombudsman Act 2013 gives the Office wide-ranging duties and powers to promote and protect human rights in Samoa. One of its functions is to inquire into widespread, systemic or entrenched situations or practices that violate human rights.² This can take the form of a 'National Public Inquiry' which enables a broad human rights approach and examination of a large and complex situation where the general public is invited to participate.

Due to the broad scope of violence in Samoa, the Office chose to focus on Family Violence – any form of violence that a person experiences in a Samoan aiga (family) whether it be a communal or small unit setting. The examination includes all forms of violence such as emotional/physiological, physical, sexual and financial. In addition, it also includes “any other controlling or abusive behaviour where such conduct harms or may cause imminent harm to the safety, health or wellbeing of a person.”³

Violence in the Samoan family is a problem. It is extensive and may even be fortified by attitudes that are embedded in our traditional communal society. Samoa can forge a solution for itself in Family 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. The National Inquiry hopes to facilitate (1) a comprehensive understanding of Family Violence in Samoa and (2) the formulation of workable countermeasures that the Samoan Community can embrace.

¹ The office does not have a shared server nor a reliable backup system. As a result, when the computers crash all the work saved on the computers are lost.

² Ombudsman Act 2013 s.34

³ *Family Safety Act 2013*, section 2.

The Inquiry was launched together with the celebration of the Human Rights Day, 10 December 2016 by the Honourable Prime Minister, Tuilaepa Sailele Malielegaoi.

Commissioners

There were 5 Commissioners selected by the Ombudsman to spearhead the Inquiry on behalf of the NHRI. Their role is to hear the evidence, form findings for the report and suggest recommendations.

The Commissioners included:

- i) Ombudsman (Chairman).
- ii) Hon. Tolofuaivalelei Falemoe Leiatua, former Parliamentarian (Vice Chairman);
- iii) Tagaloatele Professor Peggy Dunlop, Professor of Pacific Studies, Auckland University of Technology;
- iv) Leasiolagi Professor Malama Meleisea, Director for Samoa Studies, National University of Samoa; and
- v) Falenaoti Mulitalo June Kolotita Ailuai Oloialii, Active Community Member & Women's Village Representative of Vavau

Methodology

Evidence for the Inquiry will be collected through four different methods:

- i) **Research:** this is carried out throughout the Inquiry process by Inquiry staff and partners. This will involve the collection and analysis of data, media articles, case studies, reports and programmes relating to family violence.
- ii) **Consultations:** the Inquiry staff will embark on a three-phase consultation process with the following stakeholders:

Phase 1: Relevant NGOs, Government ministries, development partners and the media: The focus to obtain information on the work done and currently being undertaken to address family violence in Samoa, and to identify areas for improvement.

This phase started in September 2016 and concluded in February 2017.

Phase 2: Community bodies: Such as village representatives, National Council of Churches, National Youth Council, SOGI community (e.g Fa'afafine Association), Samoa Victim Support Group village representatives, Disability community etc. The objectives were to identify possible witnesses to tell their stories during the public or private hearings and to gain the support of village bodies to spread awareness of the Inquiry. It also aimed at encouraging members of the community to attend the village consultations which followed. In addition, views on the nature and prevalence of family violence within respective communities and possible solutions were also sought.

This phase started in February and finished in March 2017.

Phase 3: Villages/Community: Consultations sought to encompass all villages in Samoa and the involvement of as many relevant village institutions as possible to ensure universal access to the Inquiry and afford every interested person the opportunity to put forward their opinions and convey their experiences.

During the village consultations, participants were asked to complete a questionnaire and join a focus group where they were posed a series of questions. The questionnaire focused on identifying the prevalence of family violence in Samoa whilst the focus group discussions were designed to identify people's understanding of the root causes, effects and possible solutions. In total, 1,500 participated in the consultations which were held in various villages across Samoa.

This phase started in April and finished in May 2017.

- iii) **Public and closed hearings:** This part of the Inquiry won't start until later this year in September. The Office is currently preparing for this.

The public and closed hearings of the Inquiry is at the very heart of ensuring the process is an inclusive national conversation where everybody can participate. These open and closed hearings will be held over a period of three weeks across Samoa to hear evidence and personal testimonies from survivors, perpetrators, services providers, Government officials and any other interested parties. The central purpose of the public hearings is to enable a wide range of perspectives to be placed before the Inquiry and before society in general. The value of the evidence provided during the hearings is central to the National Public Inquiry process and as such this evidence forms much of the foundation of its Report and findings.

- iv) **Written Submissions:** The written submissions is catered for witnesses or participants that are either unable to attend. The due date for this is in October 2017.

The Office was fortunate to receive support (both technical and financial) from its partners including (alphabetical order):

- Asia Pacific Forum for NHRIs;
- Auckland University of Technology;
- Bluesky Samoa;
- Commonwealth Secretariat;
- Digicel Samoa;
- Government of Samoa;
- UNFPA;
- UNDP; and
- UN Women.

The final report is expected to be submitted to Parliament in June 2018.

This Inquiry is the first exercise of its type to be undertaken in Samoa and anywhere in small Pacific islands.

State of Human Rights Report 2017

This year has been an eventful year for the Human Rights team because of the National Public Inquiry into Family Violence. Due to this and the capacity of the Office, we decided to have a less comprehensive report this year. Hence, the 2017 report focused on two matters: an overview of Climate Change and Human Rights and the National Public Inquiry into Family Violence.

This Report was submitted to Parliament in June 2017.

Education and Awareness raising activities

The following are some of the highlights of awareness raising activities:

❖ *Human Rights Day 2016*

The event was held at TATTE main Conference room on December 8 2016 and Prime Minister Hon. Tuilaepa Sailele Malielegaoi was the key note speaker. The International theme for Human Rights Day 2016 was “Stand up for someone’s rights today”. This theme was adopted in Samoa through four different short messages to capture not only the essence of the Human Rights day but also reflect the focus of the National Public Inquiry into Family Violence launched on the same day.

1. Tulai ma fa’ataua lou tinā
2. Tulai ma fa’ataua lau āva
3. Tulai ma fa’ataua lou tuāfafine
4. Tulai ma fa’ataua lou āfafine

There were array of activities carried out leading up the Human Rights including talk back radio shows which aimed to raise awareness and interest of the public on the celebration of Human Rights day as well as the National Inquiry. Radio talkback shows were carried out on Radio 2AP, Malo FM and Talofa FM for 30mins each. Five questions were given to the public to answer at the end of every discussions for the chance to win free credits from Digicel and Bluesky. A total of 15 people participated in these radio activities and coverage was spread across the country through the various stations.

Men was the targeted audience as it is without a doubt that the majority of acts of violence are committed by men on women and young girls. By targeting men, trust is placed on them to honour, to fight, to defend and to stand up for the rights of their mothers, wives, sisters and daughters and not to violate them. Three (3) aumaga groups from the villages of Malie, Letogo and Vaimoso were invited to participate. These groups participated in one of the main events of day which was to perform drama and dancing to reflect the 4 themes. The groups were given criteria to base their performance on and was judge against these criteria. Letogo was impressive with their drama show on standing up for your partner which showcased strategies and methods to overcome anger in various situations particularly towards partner.

A current affair show on TV1 was also produced and aired to further raise awareness of the public on the celebrations of human rights day as well as on the mandates of the Office.

Part of the activities was a candle light moment to honour the memory of the mothers, sisters, daughters and wives who have passed due to violence and hope for a change for those who are still suffering the abuse and for those who are still experiencing violence in their homes. Also to celebrate the survivors who have risen and have been uplifted to a better place.

❖ *Friendly School*

Friendly School Program was developed and rolled out annually as a direct result of the discoveries of the first NHRI State of Human Rights Report in 2015. An important revelation was confusion among children of their rights and misunderstanding/misinterpretation of the rights of the child by adults. The program aims first to increase awareness and understanding of human rights and responsibilities in schools as a first step towards dispelling misconceptions surrounding children's rights. It hopes by increasing knowledge to foster better understanding and to instill positive attitudes and respect for the rights of the child and their application. The program also introduces human rights values of respect as a way to address issues of bullying and violence in schools with the support of the Community Unit of Ministry of Police.

Objectives of the Program

The Friendly School Outreach program provide education and awareness on the following areas;

1. The role of the Office of the Ombudsman as the National Human Rights Institution of Samoa.
2. What human rights are (NEEDs vs. WANTs).
3. What are the rights of the child and its limitations/responsibilities
4. Human Rights principles and values and how they link with values and principles of Fa'asamoa.
5. What are the values of a friendly school and ways to practice it

Permission to attend schools is sought from the Ministry of Education. The program is a half day activity which covers years 8-11 and carried out during periods approved by the School principal so that it is not in the way of usual classes. The program was rolled out in ***Paul IV College, St Joseph's College and Palalaua College***. This program have been praised by teachers who shared how the program has helped them understand human rights better particularly as some of these topics are covered in the current curriculum and not enough trainings are provided for them to assist with delivering.

❖ *Human Rights Trainings*

A central obligation of the NHRI is promotion and protection of human rights across all levels of society. This role flow a number of cross cutting responsibilities and functions which includes informing people of their human rights and fostering understanding and respect for the rights of others. In delivery of this obligation, one of its promotional activities is conducting human rights trainings both generally and for key groups which include public officials. The Office places great significance in the responsibilities vested in the invaluable functions played by various Government institutions in society that is vital to the good functioning of a democratic society and to the protection of human rights. Human Rights trainings with public officials strengthens and supports compliance with national and international human rights standards and ensuring that public officials develops an attitude of respect and value for human rights in carrying out their roles in their respective work.

Office of the Electoral Commission (OEC)

The two hour training was an introductory human rights training for officers of the Office of the Electoral Commission. The objective was to increase Officer's knowledge on the role of the Office of the Ombudsman as the NHRI and on general standards relevant to the right to vote.

Samoa Prison and Correction Services (SPSC)

Since 2016, the Office has engaged in ongoing programs in partnership with the Ministry of Police's (MOP) and Samoa Prison Services such as the Basic Human Rights Trainings for Law Enforcements.

SPSC took part for the first time in September 2016. The one day training held at Tafaigata Compound was an introductory human rights training for 25 Correction Officers help raise awareness on the role of the Office of Ombudsman and all human rights standards relevant to prison and treatment of prisoners.

Samoa Police Service (SPS)

Samoa Police Service soon followed with the introductory human rights training for Police recruits. The training provides an introduction to the key human rights frameworks both international and national which sets standards and guidance for the work of Police and encourage understanding of how these frameworks can be translated into practice when performing their duties. The training was participated by 60 recruits.

❖ Village Outreach

Village outreach was also developed and rolled out as a direct response to finding of the SHRR 2015. Many consulted believed that many social issues will arise from the introduction of human rights in Samoa. It was clear that villagers understand the basic definition of human rights as entitlements but cannot distinguish between a need or right and a want. For example, some argued that the introduction of human rights will only bring trouble to the village where young people will rebel against village rules put in place by village leaders and disrespect their parents. Some believe further that human rights will give youth the right to refuse going to school. As a result of this, human rights have become a difficult issue to discuss in communities who see them as interfering with village life and the concept is viewed negatively and dismissed.

It is important to expand knowledge and understanding on the issue of human rights. While there is a divergence in the origins of human rights beliefs between Europeans and Samoans, nevertheless they are equivalent in nature and complement each other by sustaining human dignity and entitlements and improving the welfare of individuals and their families. Human Rights are underpinned by core values or principles of fairness, respect, equality, dignity, autonomy, universality and participation. Similarly, Samoa holds core values and beliefs which guide social action such as obedience, respect, love and service. Building community awareness and understanding of human rights is a fundamental first step towards building a stronger Samoan community and preventing violations and discrimination from occurring

The initial rolled out of community education and awareness programs started with *Fasito'o-tai, Nofoali'i and Satapuala* for 2016/17 year. The community education and awareness program aim to provide awareness on the role of the Office of Ombudsman, human rights principles and application to daily lives and practical guidance on how to protect human rights of others.

❖ *Public Consultations*

Consultations for the National Inquiry into family was also a great opportunity to raise awareness of the Office and its work particularly its human rights mandate. There were 20 consultations held across Samoa participated by various groups, gender and age groups. 1,500 people participated in these consultations.

❖ *TV advertisement*

The Office corporate ad was produced and aired to further raise awareness on the Office and its work. The ad was to ensure that people of Samoa are aware of the Office and how the Office can assist them through its 3 mandates.

Special Investigations Unit (SIU)

A. Overview

The Special Investigations Unit (SIU) is one of the newest mandates of the Office of the Ombudsman (OMB), having only been established in 2016. The role of SIU is to receive, investigate and determine any complaints about a police, prison officer or officer of other prescribed disciplined forces. The SIU also carries out special investigations as directed by the OMB and/or referred by the Prime Minister.

SIU currently consists of the Director of the Special Investigations Unit and a Principal Investigating Officer. The unit's workload is increasing as more members of the public are becoming aware of this arm of the Ombudsman.

B. Achievements/Significant matters

(i) Memorandum of Understanding (MOU) with PSU

On the 11th January 2016, a MOU was drawn up between the OMB and the Professional Standards Unit (PSU) of Samoa Police Services (SPS). This is to reflect the expanded oversight functions established through the creation of the SIU and detail the administrative agreement required for both entities to meet their mandated obligations.

(ii) PSU Review

In March 2016, SIU conducted the first three tier review of Samoa Police Services' Professional Standards Unit (PSU). The first part included the review of PSU's electronic register of complaints. This was followed by a physical review of a number of files that were selected at random. The final tier involved the takeover of five (5) PSU investigation files that were unreasonably delayed. This was a success as noted in the second annual PSU review in March 2017, as PSU had implemented some of the recommendations from the first review.

(iii) Significant matters

SIU conducted 5 independent investigations throughout the financial year:

a) *“The Police Officer pointed a gun to my head”*

PSU conducted an investigation into an allegation that a police officer pointed a gun to the head of a mentally incapacitated person. The investigation concluded that there were no witnesses. The matter was therefore filed away on the grounds of insufficient evidence. SIU pulled out the file and did a second review. The investigation concluded that there were police officers that witnessed the allegation made but they were not approached for a statement.

SIU then recommended that the officer involved be charged with 2 criminal charges in the District Court. The officer involved was charged and was found guilty. He was convicted.

b) *“The Police did not bother to investigate my matter”*

Mrs A got into a car accident in Sogi. The police officer involved, responded and made the decision on the spot that Mrs A was wrong. He did not conduct a thorough investigation into who was at fault, nor did he lay any charges. He was also unprofessional and said rude comments to Mrs A.

Mrs A made a complaint to the PSU. PSU laid charges against the police officer involved and the Tribunal found the police officer guilty. Mrs A was not satisfied with the police prosecutor’s decision to withdraw 5 disciplinary charges.

SIU then pulled out the file, and did another review and conducted an independent investigation. A report was submitted to the Commissioner, highlighting the technical flaws in PSU’s investigation.

c) *“The Police raided my house without a search warrant”*

SIU pulled out this file on the grounds of unreasonable delay. Mrs B filed a complaint against the Police regarding a search they conducted without a warrant in her house. She complained that her children were frightened as they watched as the Police raided their house with guns. SIU did a file review and conducted an independent investigation. The investigation concluded that there was a search warrant but it was not produced when the complainant asked for it. Recommendations were made to Police to follow procedures laid out by the law in such circumstances.

d) *“The Police produced an invalid search warrant and inappropriately searched my wife”*

Mr C approached the Office of the Ombudsman as a last resort as he had been trying to follow up his matter for months. It was alleged that the Police produced an invalid search warrant and searched his wife while naked.

SIU did a file review and conducted an independent investigation. The investigation concluded that the search was lawful as the warrant was broad. Moreover, there were no witnesses to support the allegation that the Police searched Mr C’s wife while naked.

e) *“The Police were biased in their investigations of my matter”*

This is a referral from the Honourable Prime Minister. Mrs D (the complainant) alleged that a fight broke out between herself and a number of assailants over a land issue. The Police

responded and charged Mrs D with attempted murder while not laying any charges against the assailants she claimed had attacked her.

SIU pulled out this file from PSU and conducted an independent investigation. The investigation concluded that the PSU investigation was in fact biased and suggested a number of recommendations to the Police in rectifying the issues that surfaced.

C. Issues

(i) Relations with public sector agencies

Public sector agencies are sometimes confrontational in their relations with each other due to perceptions of challenges to turf or perhaps even status. There is still some pushback from public agencies when SIU follows up cases and requests documents for investigations. SIU is working to combat this situation through on going community awareness programs.

Section Five: Financial Statement for the Year ending 30 June 2017

The Office received a budget of \$1,119,985 for FY2016/ 2017. An increase of 18.07% from 2016 necessitated by additional mandates for the Office. This enabled the employment of additional staff. The Office will continue to assess staff performance; promote appropriately and to readjust duties and rankings to meet requirements.

The budget for FY 2016 -17 was 99.93% utilised.

Attached as Appendix “A” is a copy of the Audited Expenditure Report for the financial year ending June 2017.

Section Six: External Relations

Throughout this financial year, the Office has been heavily involved in many undertakings with other government ministries and non-governmental organizations through consultations, training programs and work groups. This were specifically with:

Government Ministries

- Law & Justice Sector Steering Committee.
- MWCSO’s CEDAW, CRC, CRPD taskforces.
- Consulted all government ministries on Samoa Human Rights Report (SHRR).

NGOs

- Consulted all NGOs on the National Public Inquiry into Family Violence.
- National Forum to promote the Ratification of the CRPD
- Anti-Corruption Workshop for CSOs

The Office has also been involved in various workshops, and conferences/meetings throughout the community and with our international partners which involved:

Local

- Child Labour Forum to commemorate the World Day against Child Labour
- 5th Annual Girls Leading Our World (GLOW) Conference
- Members of Parliament Symposium
- Legislative Drafters Forum

Regional

- Convention Against Torture in the Pacific, FIJI
- Treaty Body Reporting Training For NHRIs, FIJI
- 21st Asia Pacific Forum in the Pacific
- Annual Ombudsman Forum, NZ

International

- APF Human Rights Education Workshop, THAILAND
- Asia Pacific Forum 21st Annual General meeting and Biennial Conference, 2016 THAILAND

Section Seven: Achievements against performance measures for financial year 2016-2017

OUTPUT 1: ADMINISTRATIVE JUSTICE (Investigation and Resolution of Complaints about Govt Departments)	
Objective: To investigate complaints arising from the acts, omissions, decisions and recommendations of government departments and agencies.	
Performance Measures/Indicators	Achieved/Not Achieved
Percentage of Office awareness raising programs on the role of the Office of the Ombudsman	Achieved
Percentage of informal complaints efficiently and effectively investigated and resolved in a timely fashion	Achieved
Percentage of Ministries consulted; Frequency of consultations; client satisfaction of state agency services; frequency of monitoring of implementation of recommendations.	Not Achieved
Number of own-motion investigations initiated and completed effectively and efficiently with implementable recommendations produced	Achieved
Quarterly Review/audit of the Police Service Professional Standards Unit as well as ad- hoc reviews as the Ombudsman sees applicable.	Achieved
Telephone approaches/enquiries <i>250-350</i>	Achieved

OUTPUT 2: HUMAN RIGHTS	
Objective: To promote public awareness of human rights and efforts to combat all forms of discrimination or corruption through the provision of information and education; to inquire into, and report on, alleged violations of human rights; to monitor and promote compliance with international and domestic human rights law.	
Performance Measures	Achieved/Not Achieved
Increase understanding and acceptance of value of Human Rights in Samoa by holding 3 Public Education and Awareness Programs, 1 Annual HR Day Event, 1 Corporate Advertisement Produced and Screened.	Achieved
Critical Human Rights issues are investigated and reported on effectively and efficiently	Achieved
Produce an Annual State of Human Rights in Samoa Report	Achieved
Improved compliance of domestic legislation and policy with International Human Rights standards	Achieved
Increased Government consideration of treaty ratification – Ratify Convention of Persons with Disabilities.	Achieved
Informative timely reports submission to International Treaty bodies and mechanisms – Submission of shadow reports (eg. CEDAW) to UN Treaty Bodies upon request.	Not Achieved (No Reports Due within this period)
Increased partnerships cooperation and information sharing with regional and international bodies	Achieved
Improved coordination of Human Rights across Government, civil society and the private sector. (3x Human Rights Advisory Council)	Achieved
Number of Inspections successfully and effectively conducted to improve conditions within places of detention for detainees and staff. <i>3 inspections are conducted</i>	Not Achieved (Due to Inquiry Commitments)
Number of Inspection Reports effectively drafted to provide implementable recommendations for the improvement of conditions within places of detention for detainees and staff. <i>3 inspection reports are prepared and published</i>	Not Achieved (Due to Inquiry Commitments)

<p>OUTPUT 3: SPECIAL INVESTIGATION UNIT (SIU) (Investigation and Resolution of Complaints about Govt Departments)</p>
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Objective: To strengthen existing processes and improve the effectiveness of oversight of self-investigation by Police, Prison or other prescribed forces and carry out any other functions, duties or powers under any other Act or as are prescribed by Regulations. The Regulations allow for the SIU to identify potential troublesome cases and to monitor progress in their investigation by PSU to ensure that all are investigated with regard to due process. They allow for investigation to be taken over by SIU should there be good reason to.	
Performance Measures/Indicators	Achieved/Not Achieved
Active monitoring of all complaints received that satisfy all internal criteria.	Achieved
Complete an annual independent investigation.	Achieved
Complete an annual review of complaints mechanisms of other prescribed forces.	Achieved
Ensure 100% of matters are referred to the Offices concerned/ addressed.	Achieved
Increased public awareness of the role of the SIU demonstrated by the biennial SBS survey.	Achieved
Adequately resource SIU with capable staff able to satisfy all of SIU functions.	Achieved

GOVERNMENT OF SAMOA

SCHEDULE 2.16

STATEMENT OF MINISTRY RECEIPTS BY REPORTING CATEGORY AND EXPENDITURE BY OUTPUT APPROPRIATION ACCOUNT

for the financial year ended 30 June 2017

	2017	Original Estimate	Final Estimate	(Over)/Under	2016
	\$	\$	\$	\$	\$
OMBUDSMAN'S OFFICE					
PAYMENTS					
Outputs					
1.0 Administrative Justice (Investigation and Resolution of Complaints about Government Ministries)	265,842	267,286	267,286	1,444	281,566
2.0 Human Rights	398,541	406,234	406,234	7,693	356,901
3.0 Special Investigation Unit	224,095	285,190	285,190	61,095	147,614
Total Outputs	888,478	958,710	958,710	70,232	786,080
Transactions on Behalf of State					
Membership Fees					
International Ombudsman Institute	2,415	2,500	2,500	85	2,366
Asia Pacific Forum of National Human Rights Institutions	3,600	3,600	3,600	0	3,600
Government Policies and Initiatives					
National Human Rights Day	15,000	15,000	15,000	0	0
Rents and Leases	97,095	97,095	97,095	0	89,408
VAGST Output Tax	43,170	42,990	42,990	(180)	42,210
Total Transactions on Behalf of State	161,281	161,185	161,185	(96)	137,584
TOTAL PAYMENTS - OMBUDSMAN'S OFFICE	1,049,759	1,119,895	1,119,895	70,136	923,665
GOVERNMENT DEVELOPMENT PROJECTS					
	2017	Original Estimate	Receipts	Payments	Opening Balance
	\$	\$	\$	\$	\$
Grants - GDP					
Support for Human Rights Education & Outreach Activities Project (UNDP)	(50,036)	0	(100,337)	65,301	(15,000)
National Public Inquiry on Family Violence Project (Other)	(71,658)	0	(160,183)	88,524	0
TOTAL GOVERNMENT DEVELOPMENT PROJECTS RECEIPTS	(121,694)	0	(260,520)	153,826	(15,000)

GOVERNMENT OF SAMOA

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