



OMBUDSMAN
— NHRI SAMOA

**Samoa Office of the Ombudsman | National Human Rights Institution
(OMB/NHRI)**

Stakeholder Submission
Samoa Universal Periodic Review 3rd Cycle

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About the OMB/NHRI Samoa

The OMB/NHRI is established and operates under the *Ombudsman Act 2013*. It is an independent constitutional office that looks into matters of maladministration, abuse of power by disciplinary forces as well as the promotion and protection of human rights in Samoa.

OMB/NHRI's human rights mandate allows it to look at various aspects of promoting and protecting human rights in Samoa. This includes awareness raising, monitoring of state compliance, reporting as well as engaging with various partners both locally and internationally to ensure that human rights of Samoans are respected and protected.

OMB/NHRI's is an 'A' status national human rights institution, operating in conformity with the Paris Principles.

Information about the OMB/NHRI can be found on our website: www.ombudsman.gov.ws

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Introduction

1. We commend efforts by Government to meet its human rights commitments and obligations since its 2nd UPR in 2016. Notable progress has been made in areas including acceptance of international norms; cooperation with international mechanisms (Samoa hosting the 4th CRC Committee session, a first in the region); improved access to basic needs; and improved environmental resilience among others.ⁱ
2. However, more work is still needed to ensure the full enjoyment by Samoans of their rights. This is particularly relevant to issues such as family violence, health, education, persons with disabilities (PWD), child labor and youth unemployment among others. Therefore, it is crucial that the Government continues its commitment to progress in this endeavor.
3. Thematically structured based on Samoa’s 2nd UPR, the submission supported by consultations and OMB/NHRI reportsⁱⁱ provides an update of specific recommendations the State must consider to further respect, protect and fulfil human rights in Samoa. It also discusses emerging issues including the Constitutional reforms and COVID-19, and their impact on human rights in Samoa.

NHRIⁱⁱⁱ

4. OMB/NHRI office comprises of 16 staff, only 4 deal primarily with the human rights mandate.

5. The establishment of a standalone unit on Engagement and Communications in 2020 with more than 50% of its work involving human rights awareness and education, and the hiring of a Senior Policy Analyst (Human Rights) are great developments for the Office. However, OMB/NHRI continues to face issues of limited budget and human resources, and expertise in certain areas of human rights.

Human rights education, awareness^{iv}

6. OMB/NHRI continues to conduct human rights awareness raising initiatives in villages and schools. Such initiatives have sought to put the relevance of human rights in context alongside the cultural and faith convictions of the Samoan community to promote greater appreciation of human rights and a rolling back of a settling attitude that “human rights” is an intruding foreign construct.
7. OMB/NHRI’s Friendly School programme is conducted yearly to four primary and secondary schools.
8. OMB/NHRI have taken steps to encourage the Government through the Ministry of Education (MESC) to mainstream human rights in its curriculum as it is not comprehensively covered. Despite little interest in the proposal, the Government in 2019 created the Family Life Education (FLE) Initiative which aims to ensure that students are educated about healthy and safe families free from violence. OMB/NHRI is part of the Steering Committee. It is hoped that human rights issues and considerations (not limited to violence) are adequately covered and solidified in the FLE.

State continuously mainstream human rights into the national school curriculum, and in various school policies and initiatives such as the FLE.

Human rights training^v

9. Since 2015 OMB/NHRI has worked closely with the Police and Corrections Services to conduct basic human rights trainings for law enforcement as part of their new recruits programme. Past trainings have focused on areas such as understanding basic rights, international human rights standards in conducting police work and in dealing with prisoners.
10. OMB/NHRI in 2018 collaborated with the Samoa Faafafine Association to conduct gender sensitization workshops for police and prison officers to raise awareness on persons of diverse sexual orientation and gender identities (SOGI) and issues they face in detention.
11. Despite such trainings challenges relating to an entrenched culture of ignorance towards human rights and gender issues still exist. Moreover, there is always a high possibility that those trained will fall back into the entrenched unenlightened culture.

State mainstream human rights and gender considerations in the work of law enforcement through policy and practice. Awareness on such interventions need to be regular, monitored and evaluated.

Equality & non-discrimination^{vi}

12. Despite the consideration of gender as a ground of discrimination in Samoa's employment law,^{vii} there is still evidence of discrimination against SOGI groups.^{viii} There is also a lack of awareness among public servants as well as employers of what 'gender' is and its application to their work.^{ix}

State actively mainstream gender in its human resources and employment activities and policies. Awareness on such interventions including sensitization trainings on gender need to be conducted for public and private sectors alike.

13. Other areas including education and health do not expressly provide for gender as a ground of discrimination. Policy interventions by Government including the National Gender Equality Policy and Inclusive Governance Policy are being finalized to address issues concerning gender inequality and governance.^x It is anticipated these interventions will address gaps that currently exist including discrimination and violence against persons on the basis of SOGI.

State comprehensively reflect in laws and policies SOGI as a ground of discrimination and conduct awareness programmes accordingly.

Human rights and climate change^{xi}

14. A follow-up of 2017 OMB/NHRI State of Human Rights Report (SHRR) recommendations on climate change highlighted commendable progress in the climate change space including strengthening climate resilience and disaster risk management, and mainstreaming human rights in its international negotiations and national policy.^{xii} Moreover, Samoa through the Global Environment Facility has accelerated efforts with regard to renewable energy.^{xiii}

15. However, challenges still exist including the lack of effective monitoring and evaluation to ensure effectiveness, lack of resources and expertise to ensure sustainability of projects, reference to human rights in policies not necessarily translating into practice e.g. consultation on climate change projects are not comprehensive especially with stakeholders who will be affected by such projects. The latter is crucial to ensure that there are safeguards, accountability, and public participation, each of which are critical to protecting the lives and livelihoods of those affected by mitigation and adaptation activities.

16. There are also potential risks associated with the management and accountability of climate financing. Ensuring that funds devoted to climate action are effectively and appropriately utilized is important to ensure that climate targets are met and human rights protected in the process.

State

- *Continuously strengthen policies and sustain existing programmes to ensure a healthy environment for all now and in the future.*
- *Develop safeguards to guarantee the protection of rights of those potentially affected by mitigation and adaptation activities.*

- *Strengthen accountability, transparency and management mechanisms with regard to climate finance.*

Conditions of detention^{xiv}

17. OMB/NHRI has conducted 5 inspections and formulated 5 reports on detention facilities in Samoa since 2015.^{xv} Despite some improvements, all 5 reports highlight a dire situation regarding the conditions of facilities, wellbeing of inmates and the overall management of detention facilities.^{xvi} Issues including the lack of resources, ignorance of national and international human rights standards; lack of proper policies and systems in place to guide work such as handling children of those detained, PWDs and SOGI groups; and lack of proper rehabilitation programmes for prisoners and trainings for officers continue to hinder implementation and progress.
18. The absence or inadequate consideration given to the above challenges can lead to prisons being unsafe with consequential risk not only for the prisoners and staff but also for the public.
19. It should be noted that Prisons and Police Services were recently merged and currently undergoing a structural review. It is hoped that this will address past issues especially with regard to detention.

State

- *Implement OMB/NHRI's recommendations in its Detention Reports^{xvii} paying urgent focus on having effective rehabilitation programmes for prisoners including awareness programmes on prisoners' rights, policies to address issues like the unreasonable and inappropriate detainment of children with parents who are convicted/ detained, and addressing discrimination towards PWDs, those with mental health and SOGI groups;*
- *Strengthen the capacity of law enforcement officers by working with OMB/NHRI and other relevant agencies to raise awareness on minimum standards for treatment of prisoners.*

Health, COVID-19 and measles outbreak^{xviii}

20. The availability of an in-country local psychiatrist is a positive step for mental health. In the past reliance was placed totally on non-government funded expatriate capacity which although useful can and have been at times unsustainable. With the recent measles outbreak and the COVID-19 pandemic, growing psychological impact on affected communities and families is projected^{xix} elevating the need for more experts in the area.^{xx} It is crucial that the State continues to invest in ensuring that the mental health system is adequately equipped and supported to ensure people receive the help they need.
21. The measles outbreak also highlighted some serious gaps within the national health system. Various sources provide that the measles outbreak in particular was mishandled from the start and preventative measures were not taken seriously despite information made available to authorities

prior.^{xxi} Although the response (with overseas assistance) was swift during, it was too late for many families. The Government has seen no reason to look at events of the measles outbreak other than as 'business as usual' vehemently denying thereby the existence of any questions or issues of accountability needing examination in connection with the outbreak.^{xxii} Various members of the public have demanded an inquiry which Government rejected.^{xxiii}

22. Due to lessons learnt from the measles outbreak, the Government has been swift in its response to COVID-19. Despite Government's proactive stance, there were still issues mainly relating to information sharing and state of emergency measures affecting the business community.

Instead of sweeping bad experiences and failures in public health under the carpet, the State must examine situations fully and transparently to learn from them and to improve public health readiness in light of evident trends in public health epidemics and world pandemics.

State ensure that state of emergency measures in response to COVID-19 are proportionate and have human rights as a key consideration in decision-making process.

Sexual Reproductive & Health Rights (SRHR), services^{xxiv}

23. OMB/NHRI made concrete recommendations in its Inquiry Report to ensure that family safety including sexual education is covered in the school curriculum and delivered to all children.^{xxv} This has been supported by various advocates.^{xxvi}
24. The Government through agencies such as Samoa Family Health Association continue to raise awareness about services and issues including safe sex and family planning.
25. In 2018 the Government rejected calls for SRHR education in schools noting that such matters are private and parents are responsible for educating their children on such matters.^{xxvii} Parents have been divided on the issue, however this can be linked to the lack of awareness and understanding of the concept of SRHR^{xxviii} as distinct from morality and social norms.
26. The review of the Health and Physical Education curriculum to include FLE is underway which anticipates to address issues relating to SRHR education.

State

- *Actively raise awareness on the concept of SRHR at all levels to unpack misconceptions.*
- *Comprehensively cover matters relating to SRHR education in its existing interventions in the health and education sectors.*

Right to education^{xxix}

27. OMB/NHRI notes efforts by Samoa to promote the right to education through prioritizing early childhood education^{xxx}, investing in vocational studies^{xxxi}, as well as scholarship opportunities for teachers and doctors. Policies have also been formulated to address issues of violence, teenage pregnancy and discrimination and school dropouts.^{xxxii}
28. Despite these developments school dropouts remains an issue.^{xxxiii} This not only has a grave impact on the rights of students but also Samoa's development.
29. Funding from the Government has been streamlined within MESC's budget to cover the costs of school fees for primary and secondary schools. This is a positive move that needs to be sustained.^{xxxiv}
30. Although access and affordability of education has improved since OMB/NHRI's 2015 SHRR there are still challenges. These include inadequate resourcing of the Inclusive Education Unit within MESC^{xxxv} and parents being burdened with hidden costs imposed by village school committees.^{xxxvi}
31. Awareness on human rights and rights of PWDs among teachers needs to be strengthened. The development of an inclusive education course at the tertiary level is at its early stages.^{xxxvii}

State (in view of 2018 and 2019 SHRRs recommendations)

- *Continue efforts to ensure free compulsory education for all, raise awareness of vocational trainings opportunities and strengthen inclusive education.*
- *enforce and regularly monitor and evaluate*
 - *strategies combating issues preventing children from attending schools including child vending*
 - *laws and policies to address discrimination against pregnant teenage girls and violence in schools.*

Women's rights^{xxxviii}

32. A follow-up of the OMB/NHRI's 2015 SHRR recommendations noted adequate progress made with regard to the advancement of women in the political space at the national level e.g. 10% quota for women Parliamentarians and leadership programmes.
33. However, gaps remain which if not addressed will continue to hinder the progress of women in society. This includes lack of measures to strengthen participation of women in decision-making at the "village level". This is mainly a result of entrenched village practices that are patriarchal in nature.^{xxxix}
34. At the national level despite the 10% quota there is some concern that such temporary special measure is not progressively realized. Furthermore, gender role stereotypes continue to hinder progress requiring effective awareness programmes to address such issue.

State continuously advance women's rights through improving existing programmes and advance new initiatives in various areas including economic and political participation, health and in combating violence.

Gender-based and Family violence^{xi}

35. The prevalence of GBV and family violence in Samoa is still of great concern and one which requires priority attention by the Government. Despite increase in reporting, family violence continues to affect society, particularly women and girls, children, and other vulnerable groups i.e. PWDs, elderly, SOGI (including fa'atama and fa'afafine).

State must prioritize the issue of family violence affecting vulnerable groups by undertaking necessary legislative and non-legislative measures to address it, in view of recommendations in OMB/NHRI's Family Violence Inquiry Report.^{xii}

Children's rights^{xiii}

36. OMB/NHRI's National Inquiry found that violence has gravely impacted the lives and development of children in Samoa.^{xiii} Cases of sexual abuse has become commonplace which is a worrying thought. This is an issue which requires prioritization by the State to address. Cases of physical and verbal abuse are also worrisome.^{xiv}

37. Despite tougher laws and measures implemented by Government to address child vending in Samoa the issue is still one of grave concern especially for children's safety and security.^{xv} Although parents are to be held responsible, the ultimate responsibility of protecting the rights of children rests with the State. Children are already and continue to be vulnerable to family violence and child vending will expose them to further and serious risk and harm.

State actively address the issue of child vending/ labor through various measures both in law and practice including a mechanism to coordinate interagency efforts to address the issue. Such measures need to be enforced, monitored and evaluated.

38. OMB/NHRI has been firm in its position to repeal laws allowing for corporal punishment and the use of reasonable force in schools and/or at home.^{xvi}

39. Despite the ban of corporal punishment in 2013 little testifies to any serious implementation. This is evident with the Government's plan to introduce the use of reasonable force in schools under the Education Act 2009 in 2018.^{xvii} This is clearly inconsistent with the CRC and its Optional Protocols which Samoa is a party.

40. There is a common perception amongst Samoans that being beaten as a kid has done them good highlights the lack of awareness of the harm violence can have on children and thus requires further research.

State must repeal any form of corporal punishment and retract the changes to allow the use of reasonable force in schools. The situation with regard to parents and caregivers needs continuing concerted attention to bring about desired change in habits and practices.

PWDs^{xlviii}

41. OMB/NHRI's 2016 SHRR highlighted several issues faced by PWDs, with women with disabilities more likely to experience discrimination than men with disabilities. A follow-up in 2019 highlighted that although progress has been made including the ratification of the CRPD and the adoption of the National Disability Policy^{xlix} serious gaps remain.
42. Gaps in areas of access to health, access to justice (i.e. no guidelines on PWDs, limited awareness of services, laws), education and violence continue to exist.^l Implementation efforts continue to be hindered by issues of inadequate resources and conflicting priorities.

State

- *Actively and comprehensively address issues faced by PWDs through various legislative and non-legislative measures giving adequate consideration to recommendations in SHRRs 2015, 2016, 2018, 2019.*
- *Finalize the 2021-2031 National Disability Policy and accelerate discussion on the Disability Bill to provide for social security for PWDs.*

Constitutional reforms^{li}

43. The Constitutional reforms has caused concerns regarding the impact this will have on fundamental rights, the rule of law and the independence of the judiciary and separation of powers.^{lii}
44. OMB/NHRI expressed to Parliament that drastic amendments of the Constitution were not necessary to properly remedy problems experienced in the past by the Land and Titles Court. It provided that the stated objectives of the reforms will not be achieved in any substantive way by the reforms (now law), while they would appear to create a fragmented Constitution.^{liii}

State consider the impact of the Constitutional reforms on human rights of Samoans and on the separation of powers, and to put in place measures to ensure these are in no way compromised.

Endnotes

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- ⁱⁱⁱ See Samoa 2016 UPR 2nd Cycle Recommendations 95.26, 95.27, 95.28, 95.24, 95.25
- ^{iv} See Samoa 2016 UPR 2nd Cycle Recommendations 95.81, 95.29, 95.31, 95.46
- ^v See Samoa 2016 UPR 2nd Cycle Recommendations 95.30
- ^{vi} See Samoa 2016 UPR 2nd Cycle Recommendations 95.47, 96.31, 96.32, 96.33, 96.34, 96.35, 96.36
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- ^{ix} OMB/NHRI, "Healthy Relationship workshops for public servants", (workshop) 9-19 November 2019. OMB/NHRI, "SFA and Law Enforcement Awareness Trainings & Law Enforcement Guidelines & Standards development", (workshop) 23-26 April 2019.
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- ^{xii} OMB/NHRI, *State of Human Rights Report: How Far Have We Come?* (June 2019) https://ombudsman.gov.ws/wp-content/uploads/2020/10/FINAL-SHRR-2020-Report_-7.10.2020.pdf.
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- ^{xix} RNZ, "Samoa's govt warns of psychological toll from measles epidemic", (30 December 2019) <https://www.rnz.co.nz/international/pacific-news/406404/samoa-s-govt-warns-of-psychological-toll-from-measles-epidemic>.
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- ^{xxxviii} See Samoa 2016 UPR 2nd Cycle Recommendations 95.41, 95.34, 95.39, 95.32, 95.23, 95.43, 95.42, 95.17, 95.45, 95.44, 95.40
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- ^{xliii} OMB/NHRI, *National Public Inquiry into Family Violence in Samoa Report 2018*, https://ombudsman.gov.ws/wp-content/uploads/2019/01/2018_-SHRR-2018-National-Public-Inquiry-into-Family-Violence_-English.pdf.
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ⁱⁱⁱ *Constitution Amendment 2020*, <https://www.palemene.ws/wp-content/uploads/Constitution-Amendment-Act-2020-Eng-2.pdf>.

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