



Samoa Office of the Ombudsman / National Human Rights Institution

COVID-19 & HUMAN RIGHTS IN SAMOA

A Human Rights Lens to COVID-19 Responses

Version 1.1 – updated April 2022



INTRODUCTION

I. Background

It has now been 2 years since the COVID-19 pandemic outbreak and it has led to great loss of human life worldwide and presents an unprecedented challenge to public health, work, goods and services, education and life overall.

On the 3rd of February 2022, Samoa recorded 33 confirmed cases of COVID-19 and zero deaths. These positive cases were returning passengers on a flight from Brisbane, Australia and front line workers. On the 17th of March 2022, Samoa recorded its first community transmission case. On the day of publishing this Guide, the number of community cases was recorded at 4,029¹ with 9 recorded Covid-19 related deaths.²

Since the beginning of the COVID-19 pandemic in 2020, the Government has been rapid with its response introducing innovative and oftentimes unprecedented measures to keep Samoa safe. In March 2020, a State of Emergency Order (SOE) was issued in accordance with the Constitution, setting out certain restrictions on people's everyday living with the aim of preventing or limiting the risk of an outbreak or spread of covid-19 in Samoa. This SOE is still in effect to date.³

...the Head of State may make such Orders as necessary or expedient for securing the public safety... for maintaining public order and the supplies and services essential to the life of the community, and generally for safeguarding the interests and maintaining the welfare of the community. **ARTICLE 106 (1) CONSTITUTION OF SAMOA**

Some of the measures introduced include extensive public health campaigns, restriction on movement and social interaction, restriction on the sale and purchase of goods and services, targeted economic stimulus packages, and vaccination campaigns and rollout.

Measures to protect public health and individual's right to health can have a negative impact on another person's right to health and other rights such as freedom of movement and assembly, right to education etc. Covid-19 has highlighted clear disparities between people's enjoyment of their human rights. Covid-19 emergency responses across the world have clearly demonstrated how important it is for governments to develop a robust, scientific and evidence-based public health response. Human rights are essential in building an inclusive and legitimate response to national crises. Leaders have continued to urge States to ensure that all human rights are respected, protected, and fulfilled while combating the pandemic to ensure that their responses to the COVID-19 pandemic respect and are in full compliance with their obligations under their Constitutions, national and international human rights laws.

Whilst the COVID-19 virus does not discriminate, its impacts do. The virus and the measures necessary to combat it, including social distancing and in some cases the introduction of emergency measures and

¹ Total number of positive covid-19 cases since first community transmission detected on 17 March 2022.

² <https://www.facebook.com/healthsamoa/posts/349601167186585>

³ On the day of publishing this guide, the Government has issued State of Emergency Order number 76

restrictions on the exercise of certain rights, have negatively impacted disproportionately certain groups in society.

“Human rights are key in shaping the pandemic response, both for the public health emergency and the broader impact on people’s lives and livelihoods. Human rights put people center-stage. Responses that are shaped by and respect human rights result in better outcomes in beating the pandemic, ensuring healthcare for everyone and preserving human dignity. But they also focus our attention on who is suffering most, why, and what can be done about it. They prepare the ground now for emerging from this crisis with more equitable and sustainable societies, development and peace.” **UN SECRETARY GENERAL, COVID-19 AND HUMAN RIGHTS: WE ARE ALL IN THIS TOGETHER, APRIL 2020**

2. Purpose

The Office of the Ombudsman and Samoa’s National Human Rights Institution (NHRI Samoa) has been monitoring the impacts of the COVID-19 pandemic on human rights in Samoa. It has received a number of complaints and observed concerns of the public in the media regarding the impact of COVID-19 measures and initiatives imposed by the Government which has restricted some of their rights and freedoms such as access to health care services and access to information.

In light of these concerns and ongoing monitoring by NHRI Samoa, the NHRI Samoa will issue from time to time briefings and guides, fact sheets and statements on specific issues and matters and as they arise relating to covid-19 and human rights.

The purpose of these briefings and guides are to:

- inform and aid public understanding on human rights and how they can be impacted; and
- provide an overview guidance for policy makers, parliamentarians and the private sector of applying a human rights lens and considerations to responses and measures relating to COVID-19.

***Disclaimer:** As the nature of Covid-19 continues to evolve, so too will the Government response. Therefore this guidance may change. The following information is only intended as a guide and is not legal advice.*

3. Methodology

The information will be drawn from multiple sources including:

- Samoa Constitution, legislations and policies including SOE Orders and covid-19 measures;
- International human rights treaties Samoa is a party to;
- General comments issued by United Nation Human Rights Committees on state of emergencies and other human rights matters. They provide an authoritative and detailed interpretation of the provisions found in human rights treaties and conventions;
- Samoa Government updates on covid-19;
- Local media articles;
- Good practices from other National Human Rights Institutions around the world.

ROLE OF NHRI SAMOA

National Human Rights Institutions are state-mandated bodies, independent of government, with a broad constitutional or legal mandate to protect and promote human rights at the national level.

In the context of COVID-19, the NHRI Samoa has the functions⁴ to:

- “Promote public awareness of human rights and efforts to combat all forms of discrimination...through the provision of information and education”

NHRI Samoa through this function can share and inform the public with information about their human rights during covid-19;

- “Monitor and promote compliance with international and domestic rights laws...through reviewing existing and proposed legislation or reviewing other laws for consistency with international human rights law and recommending additional legislative and other measures to protect human rights”

NHRI Samoa through this function can monitor, raise concerns and make suggestions or guidance to Government on decisions and actions in response to covid-19 to be consistent with national and human rights law;

- “Inquire into and report on alleged human rights violations”

NHRI Samoa through this function can investigate and report on an alleged human rights violation.

WHAT ARE HUMAN RIGHTS?

- Human rights are the ground rules for how we should treat one another: with dignity, respect, equality, fairness, and security for everyone, everywhere, every day.
- Human rights are the basic rights and freedoms about life, education, health, work, personal security, equal opportunity, and fair treatment that belong to every person in the world, for no other reason than that they were born human.
- Human Rights set out basic standards for how people should be treated, relationships between individuals, groups, and the State including in emergencies.
- Human Rights set out basic standards about how we live together and inform us of our responsibilities to each other.
- Human Rights exist with responsibilities. Everyone has the responsibility to respect each other’s rights and not do things that endanger the rights of others.
- Human Rights help protect vulnerable people from the worst impacts of crises.
- Human rights start at home.

⁴ Section 33 of the Ombudsman Act 2013

HUMAN RIGHTS IN A PUBLIC HEALTH EMERGENCY

The **right to health** is a human right protected under the Universal Declaration of Human Rights.⁵ Under the International Covenant on Economic, Social and Cultural Rights, States must take necessary steps to prevent, treat and control epidemic diseases to realize the right to health.

The right to health is inherent in the right to life. The United Nations Committee on Economic, Social and Cultural Rights has emphasized that States must ensure public health measures are reasonable and proportionate to protect all human rights.

In relation to Covid-19, Article 106 (3) of the Constitution of Samoa limits the application of human rights contained in Part II of the Constitution when Emergency Orders come into effect.

Under human rights law, some rights can be limited under specific situations of emergency such as an outbreak of a disease posing a serious threat to the health of the country. The United Nation Human Rights Committee in its General Comment said that the *possibility of restrictions on certain rights is generally sufficient during situations which constitute a threat to the life of the nation.*⁶

It is essential that responses to COVID-19 be aligned with Samoa's Constitution, domestic laws that safeguard human rights, and international human rights treaties to which Samoa is a party to.

I. What human rights can be restricted?

Some human rights cannot be restricted, such as the right to life, the right not to be tortured or treated in an inhuman or degrading way and the right not to be forced to work, or to be trafficked.

Other human rights, however, can be restricted in certain circumstances such as covid-19. These rights include:

- **The right to liberty of movement:** This applies to moving from home to home, to shops, between villages, islands (Savaii, Manono, Apolima and Upolu) as well as freedom to leave the country.
- **The right to freedom of association:** With the virus being air-borne and transmitted in groups, social distancing is key to limiting the spread. Restrictions on association with other people have been introduced not only in Samoa but also worldwide during the pandemic. Restrictions have ranged from total bans on associating with anyone outside your household to only being allowed to gather in small groups for purposes like funerals, weddings and work.
- **The right to family reunification:** This includes a right to reunite with family across the borders.
- **The right to enter your country:** One is unable to enter his/her country due to border lockdown or restrictions

⁵ The right to health is also protected under the Convention on the Elimination of All Forms of Discrimination against Women and Convention on the Rights of Children which Samoa is a party to.

⁶ The United Nations Human Rights Committee General Comment No.29, State of Emergency Article 4 ICCPR, 31 August 2001; [Treaty bodies Download \(ohchr.org\)](#)

- **Right to education:** This includes the closure of schools to prevent the possible spread of COVID-19 amongst students

In the context of COVID-19, balances have to be struck between competing human rights. This means for example, rights to life, healthcare, and health protection, on the one hand, would interfere with an individual's rights to work, education, and freedom of assembly, and movement, on the other.

Under human rights law, any restriction on human rights must be guided by the following human rights principles.

Any measure to derogate and/or suspend certain rights must be proportionate and limited to those strictly required by the exigencies of the situation. This requirement relates to the duration, geographical coverage and substantive basis of the state of emergency.⁷

The following checklist is meant to enhance, rather than replace, other policy tools that is used to promote the enhancement of human rights approaches. The criteria are informed by a range of international and domestic human rights sources.⁸

2. Guide when imposing restrictions on human rights

<i>Human Rights Principle</i>	<i>Checklist Criteria</i>
<p>Proportionality</p> <p>Covid-19 Public health measures (Covid-19 measures) that limit rights must be reasonable in the circumstances and proportionate to the public health risks.</p>	<ul style="list-style-type: none"> ✓ Covid-19 measures must be the least restrictive available in order to meet the public health objectives. ✓ Equitable considerations for various vulnerable groups disproportionately affected by COVID-19 and related impacts, such as people with disability, women and young girls, children, elderly etc.
<p>Legality</p> <p>Covid-19 measures that limit rights must be based in law that is clear and accessible, and subject to independent review.</p>	<ul style="list-style-type: none"> ✓ Covid-19 measures and restrictions are established in legislation and are subject to the scrutiny and regular review of Parliament. A transparent process for review must be communicated. ✓ The law and policy establishing Covid-19 measures must not be arbitrary, unreasonable, must be clear and should be publicly available in a variety of accessible formats, including translation, access by people who do not have access to technology etc.

⁷ See OHCHR, *Restrictions on Human Rights as a result of Emergency Measures*, https://www.ohchr.org/Documents/Events/EmergencyMeasures_COVID19.pdf

⁸ See OHCHR, *Restrictions on Human Rights as a result of Emergency Measures*, https://www.ohchr.org/Documents/Events/EmergencyMeasures_COVID19.pdf

<p>Necessity</p> <p>Covid-19 measures that limit rights must be strictly necessary to meet their objective</p>	<ul style="list-style-type: none"> ✓ Covid-19 measures are based on the best available scientific evidence. ✓ Covid-19 measures must not be in place any longer than is strictly necessary and are subject to removal as soon as the capacity of the health system can be adequately managed without them. ✓ The criteria for the removal of Covid-19 measures are clearly articulated to the public. ✓ Covid-19 measures are time-bound in law and subject to regular, transparent evaluation and review processes.
<p>Non discrimination</p>	<ul style="list-style-type: none"> ✓ No restriction shall discriminate

3. General guide to managing responses to covid-19 from a human rights lens

<p><i>Approach to preventing and treating COVID-19 as a human rights obligation</i></p>	<ol style="list-style-type: none"> 1. Recognize that the COVID-19 pandemic engages the right to health and life under international human rights obligations. 2. Recognize that human rights laws require mitigating potential impacts on rights that are interdependent with the rights to health and life, including the rights to work, education, equality, access to information, freedom from cruel, inhuman or degrading treatment or punishment, and the freedoms of association, expression, assembly and movement. 3. Recognize that international human rights obligations prohibit discriminatory action, including harassment, against any persons or communities because of an association with COVID-19, perceived or otherwise.
<p><i>Set strict limits on measures that infringe rights</i></p>	<ol style="list-style-type: none"> 1. Ensure that any public health or emergency measures that are deemed necessary to prevent the spread of COVID-19 and that restrict the exercise of rights are time-bound and subject to regular reviews. 2. Recognize that Samoa’s international human rights obligations require that any measures that restrict the exercise of rights must be demonstrably justified as necessary, legitimate and proportionate. 3. Ensure that rights-based, legal safeguards govern the appropriate use and handling of personal health information.
<p><i>Protect vulnerable groups</i></p>	<ol style="list-style-type: none"> 1. Anticipate, assess and address the disproportionate impact of COVID-19 and related restrictions on vulnerable groups. 2. Make sure vulnerable groups have equitable access to health care and other measures to address COVID-19, including financial and other assistance. 3. Take steps to mitigate gendered impacts and ensure that responses to COVID-19 do not perpetuate gender inequity. 4. Ensure that public health and emergency measures consider accessibility and other needs of people with disabilities who face heightened susceptibility to contracting COVID-19 and may face extra challenges to obtaining services and supplies because of restrictive measures.

	5. Ensure that any law enforcement of public health or emergency measures does not disproportionately target or criminalize specific individuals because of their background or status.
<i>Respond to discrimination</i>	<ol style="list-style-type: none"> 1. Ensure that steps taken in response to COVID-19 are based on evidence, and deliberately challenge, reject and dispel stereotypes. 2. Anticipate and take into account the potential for certain communities to experience increased discrimination as a result of the government’s response to the COVID-19 pandemic. 3. Monitor and report on any trends in discrimination related to the COVID-19 pandemic and pursue appropriate sanctions, including criminal prosecution where appropriate.
<i>Strengthen human rights accountability and oversight</i>	<ol style="list-style-type: none"> 1. Consult with human rights institutions and experts, vulnerable groups, as well as persons and communities affected by COVID-19, when making decisions, taking actions and allocating resources. 2. Institute formal advisory roles for representatives of human rights institutions within governmental COVID-19 task forces, special committees and working groups. 3. Take a deliberate and comprehensive approach to independent human rights accountability and oversight that ensures violations are anticipated, prevented and mitigated from the outset. 4. Collect health and other human rights data regarding the response to the COVID-19 pandemic, disaggregated on the grounds of age, disability, gender, social condition, etc. 5. Regularly monitor and report publicly on the human rights impacts, outcomes and inequalities related to the COVID-19 pandemic and its management.

UNDERSTANDING THE MOST VULNERABLE OR MOST AFFECTED GROUPS BY COVID-19

The most vulnerable groups including persons with disabilities, low income earning families, women and girls, the elderly, children, those with underlying health conditions, prisoners, and persons of diverse gender identities are disproportionately affected and could be at risk of being further excluded than others by the impacts of the COVID-19 pandemic.

I. How the most vulnerable are affected?

The human rights impacts of COVID-19 on vulnerable groups may include:

- Higher risk of contracting COVID-19 due to social and underlying health conditions as well for not being eligible to get vaccinated (i.e. children under 5 and people over 85 years)
- Hateful acts, discrimination and/or harassment due to low socioeconomic and educational status
- Loss of employment leading to loss of household income and increased poverty
- Loss of housing
- Disruption of education
- Family violence and threats to safety and well-being

- Separation from caregivers
- Negative impacts on the treatment or management of pre-existing disabilities, mental health needs and/or addictions
- Restricted access to medical or other support services
- Potential discriminatory enforcement of emergency or public health-related measures
- Social exclusion

The Ministry of Health reported on the 1st of April 2022 in its Situational Report on Covid-19 pandemic that the number of children ages 4 and below who have tested positive for covid-19 as well as the elderly ages 65 and over are increasing.⁹ As of the 8th of April 2022, Ministry of Health has confirmed 7 covid-19 related deaths, of which 5 are above the ages of 60.¹⁰

Without a deliberate human rights lens to managing COVID-19, including independent oversight, the pandemic will further intensify existing inequalities especially for the most vulnerable groups.

HUMAN RIGHTS & COVID-19 VACCINE MANDATES

The Government in April 2021, started the rollout of the COVID-19 vaccine program in Samoa for the 18+ age group. The vaccination for 12 – 17 age groups then followed in October 2022. In March 2022, the vaccination rollout campaign for 5-11 years old began.¹¹

The Ministry of Health emphasises that getting vaccinated “is an important step you can take to protect yourself, your family from the effects of the virus. It’s one way we can fight the COVID-19 pandemic and protect the welfare and wellbeing of our communities. By having the vaccine you’ll be playing your part to protect Samoa. The free COVID-19 vaccine will help protect our nation, and safeguard Samoa. “It protects you, protect your families, and protect Samoa”

1. Vaccination requirements generally allowed

Mandating vaccination is generally allowed under international human rights laws. There are several legally protected rights involved under domestic and international human rights law regarding vaccines that involve a balance between public health and the protection of individual rights. Public health constitutes a legitimate purpose to limit the exercise of some rights.

2. Government’s human rights obligations concerning the covid-19 vaccine

Being vaccinated is a human rights measure in itself. States under international human rights laws are to recognise the “right of everyone to the enjoyment of the highest attainable standard of physical and mental health” by taking steps necessary for the “prevention, treatment and control of epidemic,

⁹ See <https://www.facebook.com/samoagovt/posts/337930038370153>; On the 2nd of April 2022, Ministry of Health recorded 188 positive cases of people age 60+ and children less than 10 years old at 203 <https://www.facebook.com/samoagovt/posts/338378524991971>;

¹⁰ See <https://www.facebook.com/samoagovt/posts/338889584940865>; https://scontent.xx.fbcdn.net/v/t39.30808-6/277678174_348327653980603_2790896866959909885_n.jpg?stp=dst-jpg_s206x206&nc_cat=108&ccb=1-5&nc_sid=8024bb&nc_ohc=i2Df96CiddUAX-nMeK-&nc_ad=z-m&nc_cid=0&nc_ht=scontent.xx&oh=00_AT8eRJG0ZUNWBizSuVbsU-uEKDZGxyKOWLziDR2efOx8yw&oe=6257CE58

¹¹ See <https://samoa.un.org/en/124544-samoa-offers-covid-19-vaccines-public>

endemic, occupational and other diseases”¹². One of these prevention measures is providing immunization.

The provision of immunization against major infectious diseases occurring in the community is a “core obligation” of States.

The World Health Organization (WHO) has also stated that immunization is a “core health service” that should be prioritized and safeguarded during the Covid-19 pandemic, where feasible. Samoa has endorsed the WHO Global Vaccine Action Plan.¹³

Rolling out the Covid-19 vaccine is a reasonable and necessary step to protect people from a real and immediate threat such as the Covid-19 which is about protecting the right to health.

3. Is the vaccine mandatory or can you choose whether to have it?

In Samoa, having a covid-19 vaccine is voluntary and vaccines will not be forcibly administered.

However, it appears from the State of Emergency Order that you are required to be vaccinated, through the showing of proof of vaccination, in order to enter certain public places.

The NHRI Samoa strongly encourages individuals to fully think about the consequences of their decisions on their health and their responsibility to others. Not being vaccinated can highly expose them to the virus and in turn affecting others’ right to health.

HUMAN RIGHTS AND COVID-19 VACCINATION EXEMPTIONS

It is unclear from Government covid-19 measures (policies and protocols), whether there are any exemptions to getting vaccinated.

However, proof of vaccines should not in any way limit access to essential services including health care for people who are unable to be vaccinated due to medical reasons, disability or any other safety condition.

Governments and agencies must do their best to balance the rights of people who have not been vaccinated due to a health-protected ground, such as disability, while ensuring individual and collective rights to health and safety.¹⁴ In addition, it is important that there are special measures or

¹² See Article 12 International Covenant on Economic, Social and Cultural Rights. Samoa has endorsed the WHO Global Vaccine Action Plan, <https://www.who.int/teams/immunization-vaccines-and-biologicals/strategies/global-vaccine-action-plan>

¹³ See <https://www.who.int/teams/immunization-vaccines-and-biologicals/strategies/global-vaccine-action-plan>

¹⁴ See British Columbia’s Office of the Human Rights Commissioner, *A human rights approach to proof of vaccination during the COVID-19 pandemic*, October 2021, <https://bchumanrights.ca/wp-content/uploads/COVID-19-vaccine-guidance-Oct.-2021-update.pdf>.

*reasonable accommodations, especially for those who are not able to be vaccinated due to health-related reasons.*¹⁵

I. Government obligations to accommodate for vulnerable groups & medical reasons

Unless it would significantly interfere with people's health and safety, people who are unable to receive a COVID-19 vaccine for *health*-related reasons must be reasonably accommodated. Under the vaccine regime, such persons *must provide written confirmation from their doctors* stating that they are exempted for a medical reason from being fully vaccinated and how long this would apply.¹⁶

2. What is reasonable accommodation?

The human rights principle of equality makes it wrong to treat people differently based on certain grounds. There are, however, some situations where different treatment can be justified. Human Rights laws recognise that to overcome discrimination, positive actions may be needed to help others in more vulnerable situations to be able to access services without barriers. These positive actions can be called 'reasonable accommodation'.

Reasonable Accommodation is an adjustment or modification that an employer/business/Ministries/ makes to their usual process/protocols to provide or give a person with a disability or other vulnerable groups equal and continued access to services and opportunities.

Some accommodation measures include:

- Modifying processes to ensure access and service for persons with disabilities, pregnant women, elderly etc.
- Granting of access to the unvaccinated public who requires access to medical care.
- Create vaccination exemption proof cards for those unable to be vaccinated to allow them to access services on the same terms as vaccinated people.
- Putting in place measures that specifically caters for the vaccination of pregnant women, children and the elderly;
- Making available facilities for treatment of elderly, children, and persons with disabilities etc.

3. Personal preferences and singular beliefs can be refused access

Human rights laws recognize the importance of balancing people's right to non-discrimination and civil liberties with public health and safety, including the need to address evidence-based risks associated with COVID-19.

¹⁵ See for example, NZ Ministry of Health, "COVID-19: Exemptions from mandatory vaccination", <https://www.health.govt.nz/our-work/diseases-and-conditions/covid-19-novel-coronavirus/covid-19-response-planning/covid-19-mandatory-vaccinations/covid-19-exemptions-mandatory-vaccination>

¹⁶ Samoa Ministry of Health - <https://www.health.gov.ws/covid-19/>.

Although receiving a COVID-19 vaccine is voluntary, at the same time ***a person who chooses not able to be vaccinated based on personal preference, or singular beliefs cannot get vaccination exemptions and does not have the right to accommodation.***¹⁷

HUMAN RIGHTS AND VACCINATION CARDS & EXEMPTIONS

A vaccination card is an official proof someone is fully vaccinated for Covid-19.

In December 2021, the Government of Samoa in its efforts to ensure the safety of members of the public who entered the hospital introduced a policy requiring members of the public who visited the Tupua Tamasese Meaole and Tuasivi Hospitals to provide proof of vaccination before being allowed entry.¹⁸

The National Emergency Operation Centre (NEOC) Committee further proposed that the requirement to show proof of vaccination will also be enforced in the workplace (public services) starting 1 February 2022 and those who do not provide such proof will not be able to work.¹⁹ Showing proof of vaccination will also be made mandatory for students when they return to school.²⁰

The proof and showcasing of vaccination cards in Samoa currently applies to these three areas for public services and institutions – hospitals, workplaces and schools. For the private sector, the majority of businesses have also put in place similar measures of showing proof of vaccinations for their employees and also members of the public.²¹

Requiring a proof of vaccination status to access services or enter a public venue engages several human rights, such as freedom of assembly and freedom of religion.

Similar to vaccination mandates, showing proof of vaccination complies with human rights as a measure necessary for the protection of public health and the right to health.

*Proof of vaccine policies that result in people being denied equal access to health, education and/or employment or services on **justified** grounds, should only be used for the shortest possible length of time. Such policies might only be justifiable during a pandemic. They should*

¹⁷ Right to accommodation refers to the right to be accommodated/ treated on a certain ground.

¹⁸ Samoa Ministry of Health, December 2021 – *COVID-9 and Health care facilities*: <https://www.health.gov.ws/covid-19/>.

¹⁹ FK(22) Fa’apitoa 03 - Cabinet Directive and See *State of Emergency (SOE) Order 65*: <https://www.samoagovt.ws/2022/01/order-66-poloaiga-o-faalavelave-faafuasei-numera-66/>. The Government through NEOC has also **strongly encouraged** private businesses to ensure that they put in place similar measures for the safety of their employees and members of the public.

²⁰ See Government of Samoa COVID-19 webpage: <https://www.samoagovt.ws/category/novel-coronavirus-covid-19/>. Samoa Ministry of Health advice – *What prevention measures should be implemented in schools to prevent the spread of COVID-19?* <https://www.health.gov.ws/covid-19/>. See also Matai’a Lanuola Tusani T - Ah Tong, “Vaccine cards mandatory for public servants next month”, <https://www.samoobserver.ws/category/samoa/96680>.

²¹ See *State of Emergency (SOE) Order 65*: <https://www.samoagovt.ws/2022/01/order-66-poloaiga-o-faalavelave-faafuasei-numera-66/>. See also Samoa Ministry of Health advice - *How can workplaces and businesses prevent COVID-19 transmission in the Workplace?* <https://www.health.gov.ws/covid-19/>.

*regularly be reviewed and updated to match the most current pandemic conditions and to reflect up-to-date evidence and public health guidance.*²²

I. Enforcement

Certain public services including hospitals, workplaces and schools are currently responsible under the current State of Emergency Order for ensuring that they enforce proof of vaccination. Members of the public who visit hospitals, public servants and students must make sure any information they provide to show proof of vaccination (or proof of qualifying for an exemption like a doctor's note) must be complete and accurate. There may be penalties for those who for example forge vaccine cards.²³

It is important to note that when providing any agency with discretionary powers to assess proof of identification and vaccination, this may and can lead to disproportionate application and impact on members of the public, especially vulnerable groups.

There may also be issues with those who do not have proof (either they left it at home or lost their cards) and may potentially be denied services, education or employment. In such situations, *service providers and agencies must ensure that they have in place measures to ensure that people still receive services without being denied or turned away.* An example of a measure can include confirming proof of vaccination online. *In the context of seeking medical care and for those who have not been vaccinated at all but still require urgent care, a system must be put in place where such persons are still treated.*

HUMAN RIGHTS & COVID-19 WEARING OF MASKS/FACE COVERING

In addition to showing proof of vaccination through vaccination cards, the Government through the SOE Order has also made it mandatory for the public to wear face masks/coverings especially in public places. This means that businesses, organizations and other entities can refuse entry or services to people who are not wearing masks.

Wearing masks or face coverings is mandatory for people visiting and working in businesses and services. We have human rights responsibilities to our families, neighbours, workers, and wider communities. Wearing a mask/face covering is one of these obligations that come with our human rights responsibilities to each other.

It is unclear at the moment from Government measures whether there are any exemptions to this requirement. However, under human rights law, positive actions may be needed to help others in more vulnerable situations to be able to access services without barriers. Therefore, people who cannot wear a mask due to medical reasons, disability or a condition that makes wearing a mask unsuitable, they can be exempted or do not have to (similar to the proof of vaccination).

²² See OHCHR, *COVID-19 Guidance*, <https://www.ohchr.org/EN/NewsEvents/Pages/COVID19Guidance.aspx>. See also for example, British Columbia's Office of the Human Rights Commissioner, *A human rights approach to proof of vaccination during the COVID-19 pandemic: Policy Guidance*, July 2021, <https://bchumanrights.ca/wp-content/uploads/COVID-19-vaccine-guidance-Oct.-2021-update.pdf>.

²³ See *State of Emergency (SOE) Order 66*: <https://www.samoagovt.ws/2022/01/order-66-poloaiga-o-faalavelave-faafuasei-numera-66/>.

People who object to face coverings due to their personal beliefs are not exempt from wearing a mask or in other words can be refused access.

COVID-19 & PRIVACY & CONFIDENTIAL INFORMATION

The privacy of individuals must be strictly maintained when gathering health information for managing COVID-19. Such information must be subjected to the highest level of confidentiality.

Legal safeguards for the appropriate use and handling of personal health information must also be included in policies.

TACKLING DISCRIMINATION DURING COVID-19

No one shall be discriminated against because of his or her COVID-19 status.

Workplaces and public places need to ensure that any measure put in place, does not discriminate, restrict access to medical or other support services on any basis. When enforcing vaccine mandates or proof of vaccination policies, governments and organizations must take proactive steps to make sure that specific individuals are not discriminated against and/or disproportionately targeted.

Government must:

- Ensure that steps taken in response to COVID-19 are based on evidence, and deliberately challenge, reject and dispel stereotypes;
- Anticipate and take into account the potential for certain communities to experience increased discrimination as a result of the government's response to the COVID-19;
- Monitor and report on any trends in discrimination related to the COVID19 pandemic and pursue appropriate sanctions where appropriate.

COVID-19 & ENSURING ACCESS TO INFORMATION

The right to information is a fundamental human right.²⁴ Such right imposes on the State a positive obligation to disclose on a proactive basis information including key emergency-related health information in times of emergency and crisis.²⁵

The ***right to information is crucial for ensuring public awareness and trust, fighting misinformation, ensuring accountability as well as developing and monitoring implementation of public policies aimed at solving the pandemic.*** It is crucial that the right to information is maintained during the emergency as much as possible.

Furthermore, ***governments are required to inform the public about the pandemic and the measures they are implementing by taking proactive steps to ensure the public have access to information that***

²⁴ See ICCPR, Article 19

²⁵ See UNESCO, *The Right to Information in Times of Crisis: Access to Information – Saving Lives, Building Trust, Bringing Hope!* https://en.unesco.org/sites/default/files/unesco_ati_iduai2020_english_sep_24.pdf

is necessary to inform and respond to the outbreak including information on restrictions and vaccination.²⁶

In terms of **proactive disclosure**, a number of international actors have called on States to make pandemic information widely available. Some specific recommendations include the following which we have put together in a guide:²⁷

I. Guidance on proactive disclosure of information during the covid-19²⁸

Health	<ul style="list-style-type: none"> ✓ Disaggregated data on COVID-19 cases, recovered, deaths and tests conducted; ✓ Information on health care facilities, supplies and capacity; ✓ Models and assumptions used to predict disease spread or other health predictions; ✓ Information on vaccine efficacy (including side-effects) or treatment trials; ✓ Emergency and contingency plans.
Organizational	<ul style="list-style-type: none"> ✓ Information on authorities' operations, projects and contact information during the pandemic; ✓ Staffing changes due to the pandemic; ✓ Public services which are suspended or provided during the pandemic. ✓
Financial	<ul style="list-style-type: none"> ✓ Details on budgets and funds disbursed in response to the pandemic; ✓ Details on contracts, procurement; ✓ Tender procedures during the emergency, particularly for emergency supplies and equipment; ✓ Information on any emergency budget and pandemic-related grants or loans; ✓ Budget oversight, inspection and audit information.
Legal and human rights	<ul style="list-style-type: none"> ✓ Laws, regulations and policies related to the pandemic, especially those which alter normal procedures or which are of high public interest; ✓ Information on the human rights impacts of COVID-19 policies including information on; prosecutions and penalties imposed under COVID-19 laws. ✓ Actions taken in response to disinformation/"fake news"; ✓ Information on the use of apps to contact trace or quarantine individuals, including data protection assessments; ✓ Policies and information aimed at specific vulnerable groups; ✓ Domestic violence data and resources.

²⁶ See Article 19, *Ensuring the Public's Right to Know in the COVID-19 Pandemic*, https://www.article19.org/wp-content/uploads/2020/05/Ensuring-the-Publics-Right-to-Know-in-the-Covid-19-Pandemic_Final-13.05.20.pdf

²⁷ See UNESCO, *The Right to Information in Times of Crisis: Access to Information – Saving Lives, Building Trust, Bringing Hope!* https://en.unesco.org/sites/default/files/unesco_ati_iduai2020_english_sep_24.pdf

²⁸ Some international civil society groups have developed quite specific guidance on proactive disclosure of information during the COVID-19 health emergency. Taken directly from UNESCO, *The Right to Information in Times of Crisis: Access to Information – Saving Lives, Building Trust, Bringing Hope! Issue brief in the UNESCO series: World Trends in Freedom of Expression and Media Development*, <https://unesdoc.unesco.org/ark:/48223/pf0000374369>, p. 8.

2. Stay updated using official sources

Since the start of Samoa's state of emergency measures, the Government has been rapid in its response to imposing measures to ensure Samoa was protected from COVID. Such measures included lockdowns, certain restriction orders and halting international flights. A vaccination campaign was also launched twice to ensure everyone was immunized. Information about these and other measures were disseminated widely on the Ministry of Health Official [Facebook page](#) and [website](#), the Government of Samoa's official [Facebook page](#) as well as its [Novel Coronavirus webpage](#). Information on COVID-19 related measures were and continue to be televised and broadcasted on various TV stations and radio stations.

Always consult official sources for the most relevant, reliable up to date information.

1. Government of Samoa Novel Coronavirus webpage <https://www.samoagovt.ws/cate.../novel-coronavirus-covid-19/> which provides all recent updates on government COVID-19 related measures
2. Government of Samoa Official Facebook page <https://www.facebook.com/samoagovt> which provides regular updates on State of Emergency measures and other important COVID-19 related information
3. Ministry of Health information on COVID-19 measures <https://www.health.gov.ws/covid-19/>
4. Ministry of Health Official Facebook page <https://www.facebook.com/healthsamoa> which provides regular health advice and updates for members of the public

