



POSITION STATEMENT & GUIDANCE NOTE

Office of the Ombudsman National Human Rights Institution

Statement on a human rights-based approach to managing the COVID-19 pandemic in Samoa

Section 33(c) of the *Ombudsman Act 2013*, the Office of the Ombudsman also Samoa's National Human Rights Institution (NHRI Samoa), has the function to provide guidance to Government on human rights obligations under the Constitution and international human rights conventions Samoa is a party to and to make recommendations that promote human rights including during situations of emergency and/or crisis.

This statement provides guidance to all levels of government on the principles that underlie a human rights-based approach to managing the COVID-19 pandemic. It offers high-level guidance that applies across a range of potential policy, legal, regulatory, public health and emergency-related responses to the COVID-19 pandemic.

This statement is meant to be read in conjunction with the United Nations Office of the Human Rights Commissioner for Human Rights [Emergency Measures and COVID-19 Guidance Note](#), which sets out proposed actions and considerations for governments to undertake and implement that are broadly consistent with a human rights-based approach in responding and managing the COVID-19 pandemic.¹

BACKGROUND AND CONTEXT

The COVID-19 pandemic has affected many across the world with the number of hospitalizations and deaths rising each day.² As of 3 February 2022, Samoa has recorded 33 confirmed cases of COVID-19 cases and zero deaths. Two (2) were recorded in 2021 who are no longer active, and 30 currently active (25 returning passengers and 6 healthcare workers).³

Since the beginning of the COVID-19 pandemic in 2020, the Samoan government has been rapid with its response introducing innovative and often times unprecedented measures to keep Samoa safe. Extensive

¹ See OHCHR, *COVID-19 Guidance*, <https://www.ohchr.org/EN/NewsEvents/Pages/COVID19Guidance.aspx>

² See WHO COVID 19 dashboard providing updated statistics on COVID-19 of deaths and hospitalizations around the world here: <https://covid19.who.int/>

³ Samoa Ministry of Health Public Notice **as of 2 February 2022** - <https://www.facebook.com/photo?fbid=305529308260438&set=a.226234889523214>. ***The number of active cases is expected to rise in the coming days/months.***

public health campaigns, restrictions on freedom of movement and social interaction, targeted economic stimulus packages and mandatory vaccination campaigns are a few of these measures.

However, measures to protect public health and individuals' right to health can have a negative impact on another person's right to health or on other human rights, such as freedom of movement and assembly, and rights to education, employment and non-discrimination.

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 Samoa is a party to.

The Human Rights Committee *General Comment No. 24: State of Emergency Article 4* of the *International Covenant on Civil and Political Rights* (ICCPR) expressly provides the importance for State parties to the Covenant to comply with existing human rights protections, even in emergency circumstances.⁴ This means that although States can impose restrictions and limits on the exercise of certain rights and freedoms, (1) such measures must be provided by law, (2) necessary to protect a legitimate interest and (3) proportionate to the interest at stake.⁵ They must also be of an exceptional and temporary nature.⁶

Implementing initiatives and policies that align with this statement will help protect public health and human rights during the COVID-19 pandemic. Entrenching governments' responses to the pandemic in a human rights-based approach offers a unique opportunity to benefit everyone, including vulnerable groups, during the pandemic and for generations to come.

RESTRICTING AND LIMITING HUMAN RIGHTS AND STATES OF EMERGENCY

Not every human right and/or freedom is absolute. This means there can be *restrictions or limits imposed on the exercise of certain rights and freedoms* For example, freedom of movement can be restricted during emergency lockdowns or when you are imprisoned; your freedom of choice whether or not to get vaccinated or prohibited from entering public places without showing vaccination card can be limited on the ground of public health and safety. Read more about [OMBNHRI Samoa's statement and guidance note on vaccine mandates](#).

During emergencies such as the COVID-19 pandemic, it is permissible for States under human rights law to derogate or suspend certain rights especially during emergencies. According to human rights laws and standards,

*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. Accordingly, states of emergency measures should be:*⁷

⁴ HRC, *General Comment No. 29: State of Emergency Article 4* of the ICCPR, https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=CCPR%2fC%2f21%2fRev.1%2fAdd.11&Lang=en.

⁵ HRC, *General comment no. 29, States of emergency (article 4) : International Covenant on Civil and Political Rights*, <https://digitallibrary.un.org/record/451555?ln=en>

⁶ Article 4, ICCPR. See also, *Restrictions on Human Rights as a result of Emergency Measures*, https://www.ohchr.org/Documents/Events/EmergencyMeasures_COVID19.pdf.

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

- *Strictly temporary in scope,*
- *The least intrusive to achieve the stated public health goals, and*
- *Include safeguards such as sunset or review clauses, in order to ensure return to ordinary laws as soon as the emergency situation is over.*

HUMAN RIGHTS-IMPACTS OF THE COVID-19 PANDEMIC

NHRI Samoa has been closely monitoring the impact of the COVID-19 pandemic on human rights and has also received a number of concerns regarding the impact of COVID-19 measures and initiatives by Government on certain rights and freedoms such as access to health services and access to information.

The most vulnerable groups including persons with disabilities, low income earning families, women and girls, elderly, those with underlying health conditions, prisoners, and persons of diverse gender identities are disproportionately and negatively affected by the COVID-19 pandemic. The human rights impacts of COVID-19 on these groups include among others, discrimination, restricted access to medical or other support services, loss of employment leading to loss of household income and increased poverty, and potential discriminatory enforcement of emergency or public health-related measures.

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

PRINCIPLES FOR A HUMAN RIGHTS-BASED APPROACH TO MANAGING THE COVID-19 PANDEMIC⁸

<p>Approach preventing and treating COVID-19 as a human rights obligation</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 the COVID-19, perceived or otherwise.
<p>Set strict limits on measures that infringe rights</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>Protect vulnerable groups</p>	<ol style="list-style-type: none"> 1. Anticipate, assess and address the disproportionate impact of COVID-19 and related restrictions on vulnerable groups.

⁸ See OHCHR, *COVID-19 Guidance*, <https://www.ohchr.org/EN/NewsEvents/Pages/COVID19Guidance.aspx>.

	<ol style="list-style-type: none"> 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.
<p>Respond to discrimination</p>	<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.
<p>Strengthen human rights accountability and oversight</p>	<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 by 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.