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**Samoa\***

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## **I. Introduction<sup>1</sup>**

1. The term ‘human rights’ is unfamiliar or new to many Samoans. However, the practice of respect for human rights and entitlement of every Samoan to basic human rights has and continues to be a feature of Samoa’s culture. Samoan culture (*fa’asamoa*) promotes and protects human rights by providing the foundation of a peaceful and cohesive society. Despite the changes associated with modernization that have had an impact on Samoa, the *fa’asamoa* continues to connect its people to the values of respect for one another and the principles of reciprocity, whereby great store is given to the well being of the individual, the family and the community.

2. Samoa became an independent state in January 1962 from New Zealand; which had administered Samoa initially as a League of Nations Mandate and then as a United Nations trusteeship. Samoa was the first Pacific Island country to gain independence. The Government of the then newly independent Samoa assumed responsibility for economic and social development as well as the fundamental rights of all its citizens. The Constitution of the Independent State of Samoa is the supreme law of the land which clearly sets out the fundamental rights to which every Samoan is entitled and the responsibility of the Government to ensure that these rights are observed, promoted and protected.

3. Internationally, Samoa is a member of various intergovernmental organisations including the United Nations, the Commonwealth of Nations and various regional agencies such as the Forum Secretariat and the Pacific Community Secretariat. Samoa supports and participates in the work of these organisations to promote and protect universal human rights. Nevertheless, Samoa, like most if not all countries faces challenges with the responsibilities of the State to fully deliver on human rights.

4. This report sets out Samoa’s human rights situation and highlights issues that Samoa faces in meeting its human rights obligations. The emphasis is on Government’s efforts in the promotion and protection of human rights and strategies to address some of these challenges. This report was prepared in accordance with the general guidelines for the preparation of information under the Universal Periodic Review set out in document A/HRC/6/L24.

## **II. Background information on Samoa**

### **A. Geography**

5. Samoa is a group of ten volcanic islands situated in the South Pacific Ocean, which extends for 225 miles on an east-west line in an area bounded by latitudes 13 degrees and 15 degrees south, and longitudes 168 degrees and 173 degrees west. The inhabited islands are the two main islands of Upolu and Savaii and the smaller Manono and Apolima supporting village communities. The total land area is 2,820 square kilometres with 43 percent arable land. Samoa’s climate is tropical with the cool drier months normally from April to October and the wet and cyclone season months from November to March.

6. With an income per capita of USD \$3,121 in 2009, Samoa is a medium development country with a global Human Development Index (HDI) ranking of 94 out of 182 countries.

## B. People and culture

7. The 2006 Government census recorded a total population of 180,741 persons. This is an increase of 3 per cent since the 2001 census. The Samoan population has always been concentrated or densely populated in the Apia urban area and North West of Upolu. This is to be closer to schools, employment and other social and economic opportunities. Ninety seven percent of the population is of Samoan descent while three percent is non-Samoan heritage or expatriates living and working in Samoa. English and Samoan are the official languages of communication and are taught widely in schools.

8. Religion has a significant role and influence in the lives of Samoan people and culture. Samoa is predominantly Christian with people belonging to various denominations<sup>2</sup>.

9. The people of Samoa are proud of their Samoan heritage with a history tracing back 3,000 years ago with the settlement of the islands by Austronesians originating from South East Asia. In Samoa, the Austronesian culture adapted and developed in accordance with local conditions. The impact of continuous inter-island migration after the Austronesians had settled the Pacific Islands also influenced local developments shaping them into the Samoan culture that existed at the time the Europeans made first contact with the locals in the late 1700s.<sup>3</sup>

10. The *fa'asamoa* is the invisible resin that keeps Samoan society intact and its governing systems functional, a fact that has also set it apart from its contemporary Pacific Island neighbours.<sup>4</sup> The strength of the *fa'asamoa* is the extended family. The extended family is headed by a *Matai* or chief who is appointed by family consensus. The *matai* plays a vital role in providing leadership and protection for the family, is responsible for maintaining family unity and prestige, the caretaker of family customary land for current and future generations, the mediator in settling disputes and represents the family in the meetings and gatherings of the village council. The *fa'asamoa* also provides for the distinct and different roles of men, women and children in society which inherently promote and protect the rights of all Samoans.

## C. Government

11. Samoa has a Westminster model of parliamentary democracy since it became independent in 1962. Parliament comprises of the legislative assembly and the Head of State, whose written assent is required before a Bill becomes law. The Head of State is elected by parliament for a term of five years. The Legislative Assembly comprises 49 seats representing the 43 constituent districts of the country and 2 seats for descendants of non-Samoans or those of mixed race. Samoa has a multiparty system in the assembly. The Human Rights Protection Party (HRPP) has been in government for more than 20 years having won successive general elections over this period.

12. Universal suffrage was introduced in 1991. It guaranteed for all Samoan citizens aged 21 years and over the right to vote in parliamentary general elections. General elections are held every five years; the next is in March 2011. Samoa's Electoral Act 1963 supports Article 2 of the ICCPR on the right to vote and universal suffrage.

13. The Prime Minister is elected by Parliament who then selects 12 other members of Parliament to form Cabinet. There is no limit to the number of terms for a Prime Minister.

14. The judiciary comprises the Chief Justice, Supreme Court and District Court Judges responsible for the court system, while the President, Samoan Judges (*Fa'amasino Samoa*)

and Assessors (*Fa'atonu*) preside over the Land and Titles court, which deal mainly with issues pertaining to customary land and *matai* titles.

### **III. Methodology and consultation process**

15. In accordance with UPR principles, the Ministry of Foreign Affairs and Trade (MFAT) sought the views of relevant stakeholders for the present report. To facilitate this, a taskforce was established comprising Government agencies<sup>5</sup> and non-government organizations<sup>6</sup>. The inclusion of NGOs in the Government taskforce encourages dialogue and involvement of all stakeholders including Government, civil society and human rights defenders on the preparation and discussions on the report. This process ensured national ownership. The taskforce held a series of meetings from July 2010 through to January 2011.

16. A national consultation/workshop on the UPR process was held in Samoa on 20–24 September 2010. The workshop was supported with the assistance of representatives of the Regional Rights Resource Team of the Secretariat of the Pacific Community (SPC/RRRT), the Pacific Islands Forum Secretariat and the United Nations Office of the High Commissioner for Human Rights (OHCHR) in the Pacific. The national consultations was an opportunity for both the Government and civil society to discuss and share best practices on the preparations of their respective reports and be updated on the UPR process. The format of the national consultation was also structured in a way that ensured that time was equally divided between the Government and civil society groups to facilitate their respective discussions on human rights issues and on preparations of their reports. All the members of the Taskforce as well as representatives of civil society and non-government organizations<sup>7</sup> participated in the national consultation.

17. In a dialogue and discussions that were frank, open and constructive, stakeholders expressed a wide range of views on the human rights situation in Samoa. It was generally felt that while there have been advances in the human rights situation in Samoa in recent years, there are still outstanding issues that require attention and improvement. The major issues that arose from the consultations were related to gaps in legislation which needed to be commensurate with these advances, the pervasive problem of violence against women and children, attitudes towards domestic violence, appropriate and stronger response measures from law enforcement agencies, access to health services, and cultural constraints. It was also felt that there is limited access to education, resources and employment opportunities, and insufficient facilities for persons living with disabilities.

18. In line with Cabinet directive<sup>8</sup>, the draft report was submitted to Cabinet in November 2010 for their information, comments and endorsement. Public forums were also held on the islands of Upolu and Savaii in January 2011. Prior to the public forums, the report was translated into the Samoan language and made available during these nationwide consultations to ensure its accessibility and availability to all Samoans especially at the village and community level for in-depth discussion and wider understanding.

### **IV. Institutional and legal framework**

#### **A. Constitution of Samoa**

19. Samoa has a written Constitution which guarantees to every Samoan certain fundamental human rights including the right to life, personal liberty, a fair trial, religious freedom, freedom of speech, freedom from inhumane treatment, freedom from forced labour, freedom of assembly and free association, freedom of movement and residence,

individual rights regarding property as well as freedom from discriminatory legislation. The Constitution espouses the rule of law and remedies for the enforcement of these fundamental rights which states that (i) any person may apply to the Supreme Court by appropriate proceedings to enforce the rights conferred under the provisions of Part II of the Constitution and (ii) the Supreme Court shall have power to make all such orders as may be necessary and appropriate to secure to the applicant the enjoyment of any rights conferred under the provisions of Part II of the Constitution.

20. Article 15(1) of the Constitution states that all persons are equal before the law and there is to be no discrimination on the basis of descent, language, sex, religion, political or other opinion, social origin, place of birth or family status.<sup>9</sup> Any Act, regulation, notice or exercise of executive power by the State which the Supreme Court declares as being inconsistent with the provisions of the Constitution can be considered unlawful and void.

21. The Constitution also promotes the doctrine of the separation of powers between the executive, legislature and judiciary. This separation of powers is clearly identified in the constitution and acts as checks and balances to ensure accountability and impartiality.

## **B. Legal structure**

22. Samoa's legal system is derived from the English common law system. It comprises a system of courts, with the Court of Appeal being the court of final appeal, which is often presided over by overseas judges usually from the Commonwealth jurisdiction (e.g. New Zealand and Australia); the Supreme Court presided over by the Chief Justice and three other judges; the District Court; *Fa'amasino Fesoasoani* (Assisting judges) and the Youth Court.

23. A separate Land and Titles Court, presided over by the President of the Land and Titles Court, addresses disputes relating to land ownership and succession and bestowment of *matai* titles.

## **C. Scope of international obligations/commitments**

24. Samoa is party to the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), the Convention on the Rights of the Child (CRC) and the International Covenant on Civil and Political Rights (ICCPR), the Rome Statute of the International Criminal Court (ICC) and the eight fundamental human rights conventions<sup>10</sup> of the International Labour Organization (ILO). Samoa signed the Convention for the Protection of all Persons from Enforced Disappearance (CPPED) in 2007 but has yet to ratify it.

25. Samoa is currently undertaking consultations to sign the two optional protocols of the Convention on the Rights of the Child specifically on the (i) involvement of children in armed conflict; and (ii) sale of children, child prostitution and child pornography.

26. Samoa has placed a reservation under Article 28 (1) (a) of the Convention on the Rights of the Child (CRC). While recognizing the importance of providing free primary education as specified under this Article of CRC, Samoa however is mindful of the fact that primary education is not entirely free. The Government's School Fee Grant Scheme was launched in early 2010 whereby compulsory aged children (5–14 years) no longer pay school fees to allow them to complete the full cycle of primary education. Nevertheless, parents and communities contribute to the maintenance of school buildings and facilities and pay for additional costs associated with schooling such as transport, uniforms and food.

27. Samoa also has a declaration under the ICCPR, stipulating that the term “forced or compulsory labour” as it appears in article 8 (3) of ICCPR are compatible with that expressed in article 8 (2) (a) (b) (c) (d) of the Constitution of Samoa, which stipulates that forced or compulsory labour does not include, (a) any work required to be done in consequence of a sentence of a court, (b) any service of a military character or (c) any service exacted in the case of an emergency or calamity threatening life or wellbeing of the community or (d) any work or service which is required by Samoan custom or which forms part of normal civic obligations.

28. Samoa is not yet a party to the International Covenant on Economic, Social and Cultural Rights (ICESCR), Convention against Torture and Other Cruel, Inhumane or Degrading Treatment or Punishment (CAT) and the Convention on the Rights of Persons with Disabilities (CRPD). Although Samoa has not ratified ICESCR, the objectives of the covenant are integrated into the Government’s development goals as set out in the regular periodic publications of the Strategy for the Development of Samoa. Similarly, programmes to address the needs and rights of persons with disabilities are already provided in the National Policy for People with Disabilities implemented and supported by the Government. The Constitution already protects against inhumane treatment and Samoa has abolished the Death Penalty. The Government is actively considering these conventions for possible accession in the near future.

29. In 1995, Samoa became party to the Beijing Declaration and Platform for Action for the advancement of women as agreed upon at the Fourth World Conference in Beijing, China. The Declaration and Platform for Action consolidated and reaffirmed the commitment of Samoa to the advancement of women and mainstream women’s rights into the international politics. Samoa has also endorsed the Pacific Platform for Action and it is a monitoring framework for the Pacific’s commitment in progressing human rights work in the region for the advancement of women and gender equality.

30. In 1998, Samoa became signatory to the Proclamation on the Full Participation and Equality of People with Disabilities in the Asian and Pacific region. In 2003, Samoa endorsed the *Biwako* Millennium Framework for Action towards an inclusive, barrier free and rights based society for persons with disabilities in Asia and the Pacific. The Framework is the guiding instrument for addressing issues of human rights and inclusion of persons with disabilities in the Pacific.

#### **D. Incorporation of international treaties**

31. The provisions of an international treaty must be reflected in domestic legislation before such a treaty can be effective and implemented in Samoa. As such, either new legislation is enacted by Parliament or existing ones are amended to give full effect of a treaty. Prior to becoming a party to an international human rights instrument, the Government assesses Samoa’s ability to fulfil all its obligations under the instrument including reporting and financial obligations, as well as legislative amendments to existing ones or the enactment by Parliament of new ones.

#### **E. Attorney General’s Office**

32. The Attorney General is the legal adviser and the chief prosecutor for the Government and in this capacity is instrumental in upholding the rule of law as well as the enforcement of human rights treaty obligations during its prosecutorial work. The legislative drafting division of the Attorney General’s Office is primarily charged with drafting different pieces of legislation or amending existing ones to give effect to *inter alia*

human rights conventions and all other international conventions that Samoa is a party to, in addition to other administrative legislation for Samoa. It ensures that all legislations are gender neutral. Given this mammoth task, human resources and personnel capacity remains a challenge for the division and requires assistance.

33. The Government established in November 2008 the Samoa Law Reform Commission under the auspices of the Attorney General's Office in order to undertake a review of existing legislation and regulations to ensure that they are reflective of present day realities and congruent with the culture and traditions of a changing and modernizing Samoan society. Some of the legislations in use today were drafted and in use when Samoa became independent in 1962. In the conduct of the reviews, national consultations and public forums are conducted to ensure the views of the society are captured and reflected in a piece of legislation before it is amended.

## **F. Human rights legislation**

34. Samoa does not have an over-arching legislation specifically to protect human rights. The Constitution of Samoa however guarantees for every Samoan protection and certain freedoms and equal treatment before the law. In addition, there is legislative protection for other specific elements of economic, social and political rights. It is possible that a specific human rights legislation can be developed in the future. Moreover, many rights in Samoa are advanced and progressively realized through Government policies and programmes/ plans. However, the major challenge for Government as a signatory party to the relevant human rights conventions such as CEDAW and CRC is the domestication of these international instruments into national legislations.

35. Most notable of these specific pieces of legislation are the Crimes Ordinance 1961 which recognizes that a person is not guilty until proven in the court of law (later amended in 2004 to abolish the death penalty); the Infants Ordinance 1961 gives certain protection for children from ill treatment or neglect; and the Criminal Procedure Act 1972 which sets out the process involved with criminal trials. The amendment which abolished the death penalty is in line with provisions of Article 14 of ICCPR.

36. The Land and Titles Act 1981 provides a right of appeal and remedy on disputes, primarily within extended families, on ownership of, and rights to customary lands and *matai* titles. Such cases are heard before the Land and Titles Court.

37. The Young Offenders Act 2007 ensures the protection of rights of young persons and their treatment by the courts including protection of young offenders under the age of 10 years from being charged with any criminal offence. Recognizing the strong family ties and community leadership especially village councils and the role they play in rehabilitation and reintegration programmes, the Act also allows other non-prison measures such as church/village/community service to substitute penalty for young offenders.

38. The Community Justice Act 2008 furthermore is intended to administer and operate a community based system that will promote public safety and a just society. This legislation provides opportunities for the community to participate in the rehabilitation and reintegration of offenders and ensures that Samoan customs and traditions are recognized in the sentencing, rehabilitation and reintegration of offenders into society. This legislation capitalizes on the strong cultural ties of every Samoan to encourage non-formal penalties and a community-based and promoted rehabilitation and rehabilitation system.

39. The Ministry of Women, Community and Social Development completed a Legislative Compliance Review of the Convention on the Rights of the Child in 2006, which is a tool that is useful and available for assisting with legislative reform in the work for progressing human rights.

## **G. The Office of the Ombudsman**

40. The independent Office of the Ombudsman investigates complaints against public authorities and officials.<sup>11</sup> Alleged violations of fundamental rights and freedoms by the Government or its agents are within the Ombudsman's duty to investigate as complaints of unreasonable treatment.<sup>12</sup> The Ombudsman, under section 11 of the *Komesina o Sulufaiga* (Ombudsman) Act 1988, may investigate any decision or recommendation or any act or omission relating to a matter of administration in the public sector. It does not, in its current form, address or investigate complaints against private sector entities.

## **H. Ministry of Commerce, Industry and Labour**

41. The Ministry of Commerce, Industry and Labour is mandated *inter alia* to address issues relating to workplace health, fair trading practices, consumer protection and labour legislation, employee-employer relations and safety complaints. The Ministry ensures that labour standards and regulations as prescribed by ILO conventions that Samoa is a member of and customary labour laws particularly in work places are complied with. Investigations are conducted and fines meted for any infringements of labour laws.

## **I. National Human Rights Commission**

42. The Government recognizes the need to establish a Human Rights Commission (HRC). Assistance was requested and received from the New Zealand Human Rights Commission and the Asia Pacific Forum of Human Rights Institutions (APF) to assess the feasibility of the establishment of such an institution and the different models that would best suit Samoa. The resultant scoping report recommended that the HRC be established and housed in the Office of the Ombudsman for a specific period with the view that it may be made independent in the future; to designate the Ombudsman as the Human Rights Commissioner to give support, status and recognition to the institution and that an appropriate legislation be drafted to reflect the aforementioned. The Government is now drafting a strategic plan on the requirements for the establishment of a HRC based on the report taking into account Samoa's characteristics including its culture, the *fa'asamoa*, policies and legislation.

## **V. Promotion and protection of human rights**

### **A. Cooperation with human rights mechanisms**

43. Samoa is fully cognizant of its obligations and cooperates with treaty bodies and supports the work of the OHCHR. However, challenges remain particularly with respect to reporting obligations due to financial and capacity constraints. Samoa has submitted its combined fourth and fifth periodic report on the CEDAW; and its first report on the CRC. Due to capacity constraints, it has not yet completed its first report on ICCPR (it acceded to it in 2008). This will be submitted in the near future. Also, Samoa would like to issue an open invitation to all United Nations Special Procedures mandate holders<sup>13</sup> for assistance.



## **B. Implementation of international human rights obligations**

### **1. Freedom from cruel, inhumane and degrading treatment**

#### *(a) Violence against women and children*

44. The Government recognizes that violence against women and children is a significant challenge for Samoa. Samoa is reported to have one of the highest levels of physical and sexual violence by non partners on women after the age of 15 with a prevalence rate of 65 percent.<sup>14</sup> A specific unit (Domestic Violence Unit) dedicated to receiving complaints and handling crimes of violence against women and children has been established within the Ministry of Police and Prisons. Furthermore, continuous proactive policing approach through effective awareness programmes, have encouraged victims and members of the public to step forward and report cases of abuse to the Police.

45. There is a tremendous amount of collaborative work between Government, development partners and NGOs to address this scourge in the Samoa society. The Samoa Police, the Office of the Attorney General, the Ministry of Justice and Courts Administration work very closely with relevant non-government organizations most notably the Samoa Victim Support Group (SVSG), *Mapusaga o Aiga (MOA)*, *Fiaola* Crisis Centre and *Fa'ataua le Ola* in ensuring victims of domestic violence are cared for in the legal justice system, in providing shelter and refuge for victims and counselling for victims and propagators of domestic violence and abuse.<sup>15</sup> The work of NGOs in the provision of such services and public awareness campaigns to sensitize society on this issue is very commendable. There is an ongoing dialogue on the suitability of facilities in terms of an environment conducive to same standard services outside 'safe houses'.

46. The *Family Safety Bill 2009* was developed to address comprehensively and respond effectively to domestic violence in Samoa. The Bill was drafted after extensive consultations with the public. It is presently being further considered by the Ministry of Justice and Courts Administration before it is finalised. Once the Bill is finalised, it will then be referred for Cabinet endorsement before tabling in Parliament. The Bill, when it becomes law, will give effect to relevant aspects of the CEDAW and CRC on domestic violence issues. It will also strengthen in Samoa the regional and international programmes and efforts on sexual and gender based violence and violence against women and children as promulgated by the Pacific Islands Forum and the United Nations.

47. The Ministry of Women, Community and Social Development (MWCSD) is a Government agency mandated to lead and facilitate community development in partnership with stakeholders in order to achieve social and economic development for the community including women and children. Through its partnerships with the women committees, village councils and community facilitators, government specific programmes and awareness campaigns against domestic violence are channelled quickly to the grassroots level. Years of advocacy, education and awareness has seen the emergence of village social groups addressing physical and sexual violence against children in the villages. A Five Year Implementation Plan under the Pacific Children's Programme was also completed in 2008 and is being implemented.

48. In 2009, the Crimes Ordinance 1961 Act was reviewed to update it to include new offences and to provide stiffer penalties for offenders of sexual and gender violence against women and children. A new Crimes Bill has been drafted and is currently under review before it is finalised and referred to Cabinet in early 2011.

49. A National Plan of Action for the Advancement of Women (2008–2012) provides strategies to address Samoa's priority concerns on the advancement of women. The second priority area of this plan focuses on the elimination of gender based violence. The ultimate

aim of the work on gender based violence is to ensure that “*women and in particular the girl child are protected from all forms of violence and enjoy their rights and freedoms through the elimination of gender based violence.*” Strategies to achieve this outcome include advocacy, education and awareness at all levels, law reform and law enforcement, implementation of the interagency response system and monitoring and evaluation of violence against women and children.<sup>16</sup>

50. The Government works closely with the non-government organizations, local communities and grassroots groups in implementing policies, programmes and national obligations. The success of certain awareness campaigns in highlighting this issue as well as the efforts to provide temporary measures to assist victims by the non-government organizations is commended.

51. During the national consultations, the stakeholders identified as one of the perennial problems that needs urgent attention for a comprehensive and sustainable response to domestic violence issues relates to the need to change perspectives and attitudes to the problem of domestic violence. They all commented on the lack of understanding of some Police officers in the legislative protection of human rights of vulnerable groups. They also expressed concern that many complaints or requests for assistance from victims are not adequately addressed by Police due to a conflict of interest with the offender and/or lack of training and appreciation of what constitutes an infringement of a victim’s human rights under the law. A Professional Standards Unit was established under the Police Service Act 2009 to investigate actions of Police officers and to mete disciplinary actions however; this requires further institutional strengthening, assistance and training in order to earn credibility as to its integrity.

(b) *Prisons and Police Officers*

52. The Government recognizes the challenges associated with the condition of its main prison at *Tafaigata*. Some of these challenges are resource related such as the lack of personnel, trained officers in social and rehabilitation work, limited funding and institutional support.

53. The Prison Act is undergoing a review under the auspices of the Law Reform Commission and as part of the Law and Justice Sector Plan of Government. The Law and Justice Sector Plan formulated a road map for an improved prison administration and facilities and recommended to establish the Prison Services as an independent, stand alone Authority.<sup>17</sup> In support of the Law and Justice Sector Plan, the Samoa-Australia Police Partnership has already drafted a strategic plan for the separation of the prisons function from the Ministry of Police.

54. Moreover, the Plan indicated the reconstruction or complete renovation of prisons to ensure compliance with international standards and, the segregation of pre-trial detainees, juveniles and female offenders. Renovations and construction of new and additional prison cells at *Tafaigata* Prisons were completed in October 2010 to include five cells for male prisoners and one for female prisoners. The Plan also recommended the development of a community-based diversionary system for juveniles at risk of incarceration, developing and implementing properly sanctioned rehabilitation programmes and weekend parole programmes to facilitate the smoother reintegration into society of offenders.

55. In 2006 Samoa’s only juvenile rehabilitation centre (*Olomanu*) was established to house male first offenders under the age of 18. Article 10 (2–3) of ICCPR which provides for the segregation of juvenile offenders from adults and accorded treatment appropriate to their age and legal status and protection of minors, is addressed by the Young Offenders Act 2007.

## 2. Equality and non-discrimination

### (a) Access to justice

56. Samoa recognises the right to a fair trial and equality before the law. Apart from existing human rights legislation reflecting this equality of treatment, Samoa is also implementing measures to further strengthen the right of access to justice.

57. The Government has established a Law and Justice Sector Plan 2008-2012 with the vision of *Justice for a Safe and Stable Samoa*, which focuses on improving and strengthening the legal system and services in Samoa. A key objective is to improve public access to law, justice and legal services. The Plan includes the establishment of a Human Rights Commission and a Community Law Centre.

58. A Community Awareness Task Force or *Fau-Tasi Task Force* was established to allow relevant agencies of the Law and Justice Sector to work collaboratively with the communities to ensure that they are consistently and effectively consulted in relation to law and justice matters. Importantly, it is for communities to understand the relationship between the formal legal system and the customary system in the application of justice.

59. The Ministry of Justice and Courts Administration administers legal aid. It is a practice inherent in Courts based on the Constitutional right to a fair hearing. The eligibility to access legal aid is determined on the financial capacity of the offender and the degree of seriousness of the offence. Under the Law and Justice Sector Plan 2008-2012, Government is considering the expansion of the scope of legal aid to include civil matters

60. Despite increasing efforts of Government and the Law and Justice Sector partners in working with communities and young people in the area of juvenile justice, offences committed by the youth is on the rise. Such a concern calls for adequate and appropriate support for proper training and capacity building opportunities for persons dealing with youth offenders.

### (b) Women

61. Samoa recognizes that gender equality, the empowerment of women and women's enjoyment of all human rights are key goals to attain in themselves and are also essential to Samoa's economic and social development efforts, including the achievement of our MDG's targets.

62. Women in Samoa have always been held in high esteem by traditional society. Nevertheless there are also areas of segregation based on custom, culture and tradition and on physical and natural attributes, inherited from centuries of co-existence and often based on the distribution of labour within a family and community.<sup>18</sup> These segregations and division of labour have ensured the woman's vital and central role in the Samoan culture, in the village and in the family.

63. Significant improvements have been achieved over the last decade to legally recognize the formal rights of women to education, employment, to economic, social and political opportunities. The issue of under-representation of women in parliament remains. However, this could appropriately be addressed through consolidated commitment from women themselves.<sup>19</sup> At the last general election in 2006, the largest contingent of women ran for Parliament. A total of 18 women from different constituencies competed in the 2006 general election. Only four (4) made it into the 49 member parliament, with 3 currently serving as Cabinet Ministers.<sup>20</sup>

64. Within the public sector labour force, out of 38 Government Ministries and Corporations including the Public Service Commission, eleven are headed by female Chief

Executive Officers. Many more hold senior positions as deputy CEOs, assistant CEOs, as well as responsible positions in the private sector and within NGOs.

65. From 2001 to 2006, there has been a noticeable 10 percent increase in the number of women bestowed with chiefly titles.<sup>21</sup> Women are eligible to receive and be bestowed chiefly titles like their male counterparts in line with Samoan customs and traditions.

66. The work on the advancement of women continues to make progress in line with the policy direction of Samoa's national development plan – the Strategy for the Development of Samoa. Since 2005, Samoa's focus had been on strengthening the legal and policy framework for the advancement of women in order to ensure that women were participating in social and economic development not only as contributors to and equal partners, but also as beneficiaries of development at all levels.<sup>22</sup>

67. In addition, advocacy on CEDAW and CRC by the MWCSO to advance the status of women continues to date with national level and village based programme implementation. These programmes centre around issues such as gender based violence, HIV and AIDS awareness and prevention and the broader reproductive sexual health issues, entrepreneurship and small business development and negotiation and leadership skills training for women and girls. The ultimate aim for these programmes is to improve the quality of life for women and girls by providing them with information, the relevant skills and knowledge in order to make informed decisions and choices to improve their quality of life.<sup>23</sup>

68. Females continue to outperform their male counterparts in most levels of education. The ratio of females per 100 males enrolled in primary level is 0.97:1 and 1.13:1 for secondary education. There are also more females in tertiary education accounting for 61 percent compared to 39 percent for males.<sup>24</sup>

(c) *Persons with disabilities*

69. Government recognizes the challenges faced by persons with disabilities. According to the population and housing census of 2006, there are 2096 persons living with disabilities in Samoa – 1155 are males and 941 are females. There is no specific legislation for persons with disabilities. Despite this, the government ensures the rights of persons living with disabilities are incorporated and integrated into national and sector plans requiring public buildings to be accessible to people with disabilities. Government is actively considering acceding to the Convention on the rights of people with Disabilities and the enactment of appropriate legislation and policies to give effect to this treaty in Samoa.

70. Samoa also has a National Disabilities Taskforce chaired by the MWCSO with other government agencies and NGOs as members. The Taskforce is responsible for coordinating and implementing programmes to assist persons with disabilities.

71. A National Policy and National Plan of Action for Persons with Disabilities were established in 2009 to guide the work of the Taskforce and the coordination of its programmes not only amongst themselves but also with the villages and communities. The *Nuanua o le Alofa*, an organization for people with disabilities and the *Loto Taumafai* for children with physical disabilities are notable in promoting the rights of people with disabilities and in conducting their own advocacy programmes and efforts to mainstream policy and programme implementation on the rights and needs of people with disabilities.<sup>25</sup> The Government in 2009 launched a pilot programme for the reintegration of children with special needs into the regular school system.

72. Furthermore, the Occupational Safety Health Act 2002 will be reviewed to include a provision for all workplaces to have the proper facilities installed for persons living with disabilities.

73. The Mental Health Act 2007 provides for the maintenance and recognition of rights for persons with mental illness. This Act promotes the voluntary care, support, treatment and protection within the family and community of people with mental illnesses. Moreover, it protects the rights of persons living with mental illness including the rights to be given an explanation of their rights, the right of review of certain orders made against a person living with a mental illness including administration of property.<sup>26</sup> A mental health institution exists and is functional for persons with mental illness.

### 3. Right to education

74. Government continues to improve access and equity by ensuring that all children are treated equal, including children with disabilities. The Education Act 2009 makes it mandatory for Government to share the responsibility for early childhood and special needs education by supplementing and supporting community initiatives. At the same time, the demand and supply of good quality teachers is being addressed for the improvement of quality of education.

75. In spite of huge financial injections, direct infrastructural support and efforts by Government to improve education outcomes for children and young people in Samoa, a drop in the proportion of children (aged 5–14 years) attending primary education is a concern. According to the 2006 Census, the ratio of school attendance at the primary level dropped by five percent. Access to schools in terms of availability of schools is not an issue. Every district in Samoa has a primary school which is jointly supported by Government and the village community.<sup>27</sup> In every village also, there are pastors' schools for preschool aged children to primary level that operate at the end of the formal school day.

76. The Compulsory Education Act 1991/92 and the Education Act 2009 make it mandatory for compulsory aged children (5–14 years) to attend school. The Samoa School Fee Grant Scheme launched in early 2010 is a partnership effort by the Government and development partners to assist with achieving education of all children for the full 8 years of primary school. There is also an annual monetary donation by Government to private and mission schools to assist with their developments.

77. The Ministry of Education, Sports and Culture's Strategic Policies and Plan July 2006–June 2015 focuses on quality improvement at all levels of education and achievement of universal education. The Plan aims to expand and improve early childhood education, special needs education, adult literacy and access to life skills and continuing education for adults and youth as well as to eliminate gender disparities in schools and achieve gender equity through appropriate curriculum development inclusive of the use of gender neutral language in the curricula.

78. The *National Curriculum Statements* and the *National Curriculum Framework* advocate human rights through education and training. The use of student and teacher resources is seen as practical modalities, which aid awareness of human rights through education and training. In addition, the *Education for All (EFA) Action Plan* emphasizes the rights to education for all. It reaffirms the World Declaration on EFA at the World Education Forum held in Dakar, Senegal in 2000, which noted that education is a fundamental human right and that the basic learning needs of all, can, and must be met.

79. Public schools at secondary level are highly subsidized by Government. The National University provides tertiary education and qualification for Samoan students who were not able to obtain scholarship award offers for university education in New Zealand,

Australia or Fiji. The Institute of Technology of the National University of Samoa offers further studies for diplomas in business and technical trades.

80. Considerable progress has been made in access to information and communication technologies, especially in mobile phone coverage and use of the internet over the last decade. The One-Laptop-Per-Child programme and the School Net programme running in alignment with the establishment of 14 community tele-centres nationally will boost internet access in the next few years as well as the use of the internet and CDs as learning media.

81. The access of children with special needs to early intervention and education services is also a priority. The *Loto Taumafai* Early Intervention Programme is the only village based programme available in Samoa that focuses on prevention and rehabilitation of children with disabilities under the age group of 15 years. It is also a challenge and a call on appropriate learning resources, facilities and trained personnel to allow relevant intervention services to occur for children with disabilities.

#### **4. Right to health**

82. Samoa's health sector is a publicly funded health system. It was the third largest area of public spending at \$65 million of Samoa's national budget in the 2010/2011 financial year for the Ministry of Health and \$58 million for the National Health Services.<sup>28</sup> Despite this significant financial underwrite, significant challenges remain particularly in the quality and access to health services. Modern equipment, financial resources, trained staff and health care providers, support for district health and the shortage of health professionals in specific fields remain significant challenges for the Government.

83. Samoa's public healthcare infrastructure consists of 2 main hospitals, 3 district hospitals and several health centres strategically located throughout the country for easier geographical access. Healthcare services including medication are subsidized or free of charge for senior citizens. As well, the implementation of community plans and awareness programmes on areas such as environmental health, water and sanitation, nutrition, sexual reproductive health, food safety, preventive health services, health research and promotion of public health are ongoing.

84. Non-communicable diseases, increasingly, are leading causes of ill health and early death in Samoa. Over the past two decades there has been a dramatic rise in cases of coronary heart diseases, stroke, high blood pressure and maturity onset diabetes, along with gallstones, digestive disorders and bone/joint problems. These are linked to changing diets, increased use of tobacco and alcohol and limited public understanding of associated health risks.<sup>29</sup>

85. HIV/ AIDS continues to pose a major threat that requires the maintenance of vigorous public awareness programmes and effective institutional medical responses. The resurgence in tuberculosis incidence is also a concern requiring the further strengthening of awareness and treatment regimes.

86. The Government encourages greater community participation as a means for expanded coverage and effective service delivery of preventive measures for children's health. Greater emphasis needs to be given to further strengthen a rights-based approach to facilitate access for women to reproductive health services.

87. Samoa is also focused on the development of infrastructure in particular basic infrastructure to ensure the right to live secure and healthy lives and protection from natural disasters and adverse impacts of climate change.

## 5. Right to freedom of religion or belief

88. The right to freedom of religion is protected in the Constitution of Samoa. Article (11) of the Constitution guarantees that *every person has the right to freedom of thought, conscience and religion; this right includes freedom to change his/ her religion or belief, and freedom, either alone or in community with others, and in public or private, to manifest and propagate his/ her religion or belief in worship, teaching, practice and observance.* Article (11) also allows reasonable restriction to be imposed on the exercise of these rights. Religion is an important aspect of Samoan life and is integrated into the fa'asamoa. For over a century and a half now, Christianity remains the dominant religion in Samoa.

89. The emergence in recent years of new denominations and their spread into the rural villages to co-exist with earlier arrivals has been a cause of growing tension. Some established mainline churches are now openly calling for measures to curb what they see as the negative consequences of a seemingly expanding multiplicity of Christian groups competing for adherents in the small finite pools of church goers in the villages. In another dimension, the situation has given rise to conflict with traditional village councils in the latter's exercise of de facto civic jurisdiction to regulate rural village affairs in the absence of legislated local government Authorities throughout Samoa. It is not uncommon for village councils to mete out heavy penalties to adherents of denominations seeking to establish in a village against the council's wishes. Confrontations in some instances have led to ugly violence. In some occurrences reported on the news, where complaints have come before the courts, it was found that the village councils had been in violation of religious freedom. A Commission of Inquiry set up in March 2010 to look into the operation of Article 11 of the Constitution has reported to the Government but the Report has yet to be released.

## 6. Right to work and to just and favourable conditions of employment

90. There has been progress in employment and working conditions in terms of occupational health and safety in Samoa. The Labour and Employment Act 1972 is being reviewed with further consultations to be conducted on areas concerning sexual harassment regulations in the workplace, maternity and paternity benefits to be in line with the eight weeks paid leave of the public sector and to review child labour provisions.

91. In 2008, Samoa ratified the eight fundamental ILO human rights conventions with the desire to provide better working conditions and entitlements for Samoans. It must be mentioned that Samoans, by its very culture, traditions and norms, participate, at any age or sex, in voluntary work or unpaid labour when helping with communal, family or church projects. It may not be deemed exploitative labour. As such, Samoa's declaration under the ILO 1973 Minimum Age Convention confirms the conformity of its Labour and Employment Act with the Convention on the minimum employment age of 15. Furthermore, the Constitution of Samoa stipulates that labour shall not include any work or service which is required by Samoan custom or which forms part of normal civic obligations.

92. The Ministry of Commerce, Industry and Labour administers the Labour legislations that promote harmonious relationships between employers and workers in every workplace in Samoa. These include the Labour and Employment Act 1972, the Labour and Employment Regulations 1973, the Shops Ordinance 1961, the Public Holidays Act 2008 and the Occupational Safety and Health Act 2002, which stipulate certain minimum conditions in accordance with universally accepted basic human rights pertinent to employment. The Public Service Commission implements labour policies and uphold international labour standards in the public sector. Each employee enjoy leave entitlements for maternity, paternity, annual, sick, special and fringe benefits based on years of service and performance. Equal employment opportunity for all is advocated in the Public Service

Act and appointments are merit-based and gender neutral. An appeals mechanism is available to appeal a decision of the Commission or to lodge a grievance.

93. The creation of employment opportunities is a key objective of the Strategy for the Development of Samoa and reflected in an enabling environment for investment and businesses that continue to be pursued through a series of reforms made in the public and financial sectors. The Government is also involved in securing arrangements that provide opportunities for Samoans to access temporary employment abroad.

#### **7. Right to freedom of opinion and expression**

94. The media in Samoa is independent. Except for the *Savali* newspaper and the 2AP which are Government owned, other media outlets are private. Freedom of opinion and expression in Samoa is promoted and encouraged by Government. However, greater awareness-raising is required in regards defamation and the distribution of unauthenticated documents. The Defamation Act 1992/1993 sets out the process involved with defamation proceedings and outlines the available defences such as justification and fair comment.

#### **8. Right to participate in public and political life**

95. The constitution prohibits measures that discriminate against individuals seeking public or political life. In Samoa, any Samoan citizen holding a *matai* title can stand for election. Men and women have equal rights to hold a *matai* title either through heritage or service to the extended family and the title is only bestowed with the extended family consensus. As such, the *matai* is the representative of the extended family and conveyer of the family's views and aspirations when standing as a candidate and eventually as the representative in Parliament.

## **VI. Key human rights priorities**

96. The key priorities of Government as noted in this report are:

- (a) Improving the economic, social and cultural wellbeing of the people of Samoa;
- (b) Legislative reviews;
- (c) Further promote public awareness and advocacy on fundamental human rights including the rights of children and women;
- (d) Ratification of core international human rights instruments and reporting obligations.

### *Notes*

<sup>1</sup> The following abbreviations and terms have been used:

APF	Asia Pacific Forum on Human Rights Institutions
CAT	Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment
CEDAW	Convention on the Elimination of All Forms of Discrimination Against Women
CEO	Chief Executive Officer
CPPED	Convention for the Protection of All Persons from Enforced Disappearance
CRC	Convention on the Rights of the Child
<i>Fa'asamoa</i>	Samoan Culture/ Customs
<i>Fa'atonu</i>	Assessor



HRC	Human Rights Commission
HRRP	Human Rights Protection Party
ICC	International Criminal Court
ICESCR	International Covenant on Economic, Social and Cultural Rights
ICCPR	International Covenant on Civil and Political Rights
ILO	International Labour Organisation
<i>Matai</i>	Samoan term for Chief
MDG	Millennium Development Goals
MFAT	Ministry of Foreign Affairs and Trade
MWCSD	Ministry of Women, Community and Social Development
NGO	Non-Government Organisation
OHCHR	Office of the United Nations High Commissioner for Human Rights
RRRT	Regional Rights Resource Team – Secretariat of the Pacific Community
SPC	Secretariat of the Pacific Community
SVSG	Samoa Victim Support Group
UPR	Universal Periodic Review.

- <sup>2</sup> Congregational Christian Church of Samoa; Roman Catholic; Methodist; Latter Day Saints; Assembly of God; Seventh Day Adventist; Worship Centre; Jehovah's Witness; Full Gospel; Church of Nazarene; Pentecost; Peace Chapel; Baptist; Protestants; Anglican; Elim Church and Christian Fellowship.
- <sup>3</sup> Samoa National Human Development Report, NUS & UNDP, 2006: 24.
- <sup>4</sup> Samoa National Human Development Report, NUS & UNDP, 2006: 11.
- <sup>5</sup> Ministry of Foreign Affairs and Trade; Ministry of Women, Community & Social Development; Ministry of Police and Prisons; Ministry of Finance; Ministry of Commerce, Industry & Labour; Ministry of Justice & Courts Administration; Ministry of Education, Sports & Culture; Ministry of the Prime Minister & Cabinet; Ministry of Health; Office of the Ombudsman; Attorney General's Office; Public Service Commission and the National University of Samoa.
- <sup>6</sup> Samoa Umbrella for Non-Government Organizations (SUNGO); Journalist Association of Samoa (JAWS); National Council of Churches (NCC).
- <sup>7</sup> SUNGO; Samoa Victims Support; *Mapusaga o Aiga*; *Loto Taumafai* Society; Samoa Aids Foundation; *Fiaola* Crisis; *Nuanua o le Alofa*; Samoa *Fa'afafine* Association; *MAFUTA* Counselling; Samoa Society for the Blind (PREB) and the National Council of Churches.
- <sup>8</sup> Cabinet Directive (reference number F.K.(10) 32).
- <sup>9</sup> Constitution of the Independent State of Samoa, 1960: 3–15.
- <sup>10</sup> Freedom of Association and Protection of the Right to Organize Convention, 1948 (No. 87); Right to Organize and Collective Bargaining Convention, 1949 (No. 98); Forced Labour Convention, 1930 (No. 29); Abolition of Forced Labour Convention, 1957 (No. 105); Equal Remuneration Convention, 1950 (No. 100); Discrimination (Employment and Occupation) Convention, 1958 (No. 111); Worst Forms of Child Labour Convention, 1999 (No. 182).
- <sup>11</sup> *Komesina o Sulufaiga* (Ombudsman) Act 1988.
- <sup>12</sup> Samoa's combined initial, second and third periodic reports to the Committee on the Elimination of Discrimination against Women (CEDAW/C/WSM/1-3), 31 & 33.
- <sup>13</sup> "Special procedures" is the general name given to the mechanisms established by the Commission on Human Rights and assumed by the Human Rights Council to address either specific country situations or thematic issues in all parts of the world. Currently, there are 31 thematic and 8 country mandates. The Office of the High Commissioner for Human Rights provides these mechanisms with personnel, policy, research and logistical support for the discharge of their mandates.
- <sup>14</sup> 2005 WHO Multi-Country Study, *Millennium Development Goals Report, Second Progress Report*, 2010: 29.
- <sup>15</sup> Ministry of Women, Community & Social Development, Report on the Status of Women 2009, Combined Fourth and Fifth Periodic Report on the Convention on the Elimination of all forms of Discriminations against Women, Government of Samoa.
- <sup>16</sup> Ministry of Women, Community & Social Development, Report on the Status of Women 2009, Combined Fourth and Fifth Periodic Report on the Convention on the Elimination of all forms of Discriminations against Women, Government of Samoa.
- <sup>17</sup> Samoa Law Reform Commission, Prisons Act 1967, Issues Paper IP 07/10, 2010.

- <sup>18</sup> Samoa National Human Development Report, National University of Samoa and UNDP, 2006: 181.
- <sup>19</sup> Millennium Development Goals, Samoa's Second Progress Report, 2010.
- <sup>20</sup> Millennium Development Goals, Samoa's Second Progress Report, 2010: 29.
- <sup>21</sup> Millennium Development Goals, Samoa's Second Progress Report, 2010: 28.
- <sup>22</sup> Ministry of Women, Community & Social Development, Report on the Status of Women 2009, Combined Fourth and Fifth Periodic Report on the Convention on the Elimination of all forms of Discriminations against Women, Government of Samoa.
- <sup>23</sup> Ministry of Women, Community & Social Development, Report on the Status of Women 2009, Combined Fourth and Fifth Periodic Report on the Convention on the Elimination of all forms of Discriminations against Women, Government of Samoa.
- <sup>24</sup> Millennium Development Goals, Samoa's Second Progress Report, 2010: 26.
- <sup>25</sup> Ministry of Women, Community & Social Development, Report on the Status of Women 2009, Combined Fourth and Fifth Periodic Report on the Convention on the Elimination of all forms of Discriminations against Women, Government of Samoa.
- <sup>26</sup> Ministry of Women, Community & Social Development, Report on the Status of Women 2009, Combined Fourth and Fifth Periodic Report on the Convention on the Elimination of all forms of Discriminations against Women, Government of Samoa.
- <sup>27</sup> Samoa National Human Development Report, National University of Samoa and UNDP, 2006: 84.
- <sup>28</sup> Ministry of Finance, Approved Estimates of Receipts and Payments of the Government of Samoa for the Financial Year Ending 30<sup>th</sup> June 2011.
- <sup>29</sup> Strategy for the Development of Samoa 2008–2012: 31–32.
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