



# **SAMOA**

## **AMNESTY INTERNATIONAL SUBMISSION TO THE UN UNIVERSAL PERIODIC REVIEW 39TH SESSION OF THE UPR WORKING GROUP, 1-12 NOVEMBER 2021**

### **FOLLOW UP TO THE PREVIOUS REVIEW**

1. Amnesty International welcomes the positive steps taken by the Samoan government to implement the recommendations it committed to at the last UPR session.
2. Samoa acceded to the International Convention Against Torture or Other Cruel Inhuman or Degrading Treatment or Punishment (CAT), the Convention on the Rights of Persons with Disabilities, and the Optional Protocols to the Convention on the Rights of the Child.<sup>1</sup>
3. In May 2016, the Ombudsman's Office received 'A' status as a national human rights institution in accordance with the Paris Principles.<sup>2</sup> Further resources are required to enhance the investigative powers and functions of the Ombudsman and ensure awareness and accessibility by the public.
4. Samoa has yet to fulfil its commitments to accede to additional human rights treaties made at the last review,<sup>3</sup> as well as addressing emerging challenges to the independence of judges and lawyers. Ongoing areas in need of further human rights protection include gender equality, the rights of persons based on their sexual orientation and gender identity, access to health care and the climate crisis.
5. Despite committing to do so, Samoa has not yet ratified the Optional Protocol to the Convention on the Elimination of All Forms of Discrimination Against Women<sup>4</sup> or the Optional Protocol to the Convention on Rights of Persons with Disabilities.<sup>5</sup>
6. Annex 1 is a matrix of recommendations from Samoa's last review. Of the accepted recommendations, implemented recommendations are highlighted in green, and partly implemented or not yet implemented recommendations are highlighted in yellow.

### **THE NATIONAL HUMAN RIGHTS FRAMEWORK**

7. Samoa's Ombudsman Office serves as a national human rights institution and is compliant with the Paris Principles.
8. The Supreme Court is the superior court in Samoa and the ultimate appellate court on all matters except land disputes. Previously, appeals to the Supreme Court had upheld constitutional rights to freedom of religion in village (known as Fono) decisions, and were widely recognised as leading human rights jurisprudence in the Pacific.
9. Abortion is illegal unless there is serious danger to the life, physical or mental health of the woman. The

Crimes Act 2013 (ss112-115) makes abortion punishable by up to seven years imprisonment.

10. The Crimes Act 2013 criminalizes 'prostitution' and related offences (ss70-75). Laws criminalising sex work can be harmful to women and increase the violence and stigma they are likely to experience, as well as creating barriers to access adequate health care.
11. Sexual activity between consenting adult males carries a prison sentence of up to five years. Under the Crimes Act 2013 (ss67, 68 and 71) sodomy, attempted sodomy and keeping a place of resort for homosexual acts is criminalized.

## HUMAN RIGHTS SITUATION ON THE GROUND

### INDEPENDENCE OF THE JUDICIARY, RIGHT TO A FAIR TRIAL AND ACCESS TO JUSTICE

12. On 4 June 2020, Amnesty International expressed its concerns about newly proposed laws which would allow greater executive powers to dismiss and discipline judicial officers, remove the bill of rights application to land matters, and create separate land courts which are not subject to same appellate jurisdiction as other cases.<sup>6</sup> On 26 May 2020, the Special Rapporteur on the Independence of Judges and Lawyers wrote to the government of Samoa expressing concern and making recommendations to strengthen the independence of the judiciary.<sup>7</sup> These laws passed in December 2020<sup>8</sup> and were also criticised by the Samoa Law Society and other legal experts.<sup>9</sup>
13. In the new laws, the Land and Titles Court is retained, but appeals to the Supreme Court of Samoa and the Court of Appeal are prohibited, and instead handled by a new Land and Titles High Court and Land and Titles Court of Appeal and Review. The bill of rights under the Constitution also no longer applies to matters before the land courts, even though a decision to remove someone from their land could amount to a violation of the right to adequate housing and freedom from discrimination.
14. These law reforms were proposed when the Prime Minister has several cases before the courts in which he has a vested interest in the outcome. This includes a case where extradition is being sought of a person living in Australia, Talalelei Pauga, for alleged conspiracy to murder the Prime Minister. Amnesty International remains concerned that the extradition may be politically motivated and that the accused may not receive a fair trial because of ongoing interference with the independence of judges and lawyers. A vocal opponent of the Prime Minister's policies, Pauga has been detained in Australia since 20 August 2020, pending the extradition hearing and it is not clear what evidence, if any, the Samoan government has in this case.<sup>10</sup>
15. In 2020, Amnesty International received reports that three lawyers have received threats, harassment and intimidation for speaking out on law reforms, for the clients they represent or for their political opinions and beliefs.

### GENDER EQUALITY

16. Despite accepting recommendations to address violence against women and girls and violence based on sexual orientation and gender identity,<sup>11</sup> gender inequality is pervasive and there are high rates of violence against women.<sup>12</sup> The following laws disproportionately impact on women.
17. Girls can marry at 16 years of age, and boys can marry at 18 years of age, if they have the consent of a parent or guardian; otherwise, the age of consent is 19 years old for women and 21 years old for men (Marriage Ordinance 1961). The minimum age for marriage should be 18 years of age for both men and women.

18. Samoa's criminalization of abortion violates its duty to respect and protect women and girl's rights, including their rights to life, health, privacy, and freedom from torture and other ill-treatment.

## SEXUAL ORIENTATION AND GENDER IDENTITY

19. Samoa has a large community known as Fa'afafine and Fa'afatama that are culturally unique to Samoa and would be described as transgender in Western societies. In spite of this cultural recognition, they still face discrimination and harassment in the community. While being transgender is tolerated in Samoan culture, consensual adult same sex sexual conduct is condemned and criminalized. All people, regardless of their sexual orientation or gender identity, should have their human rights protected and respected.
20. The Samoan Prime Minister has cited Christian beliefs in his refusal to amend discriminatory laws that deny the right to freedom of expression, the right to privacy, the right to bodily autonomy and the right to family for LGBTI people.<sup>13</sup>
21. Amnesty International notes the clear link between criminalization and levels of violence, discrimination and stigma against people based on their sexual orientation and gender identity.

## DISABILITY RIGHTS

22. Amnesty International acknowledges that the government of Samoa has established the mobility device unit, under the Ministry of Health. However, we are concerned with the lack of access of persons with disabilities to specific health services and support, limited health specialists and lack of disability diagnostics resources that will hinder the full realization of human rights for people with disabilities.<sup>14</sup>

## ADEQUATE HEALTH CARE AND PANDEMIC RESPONSE MEASURES

17. In 2019, Samoa had a serious outbreak of measles that resulted in 83 deaths with children being disproportionately impacted (87% of deaths were reported as children under five years old).<sup>15</sup> Samoa needs to address health care challenges that lead to the outbreak, including inadequate health care, low vaccination rates and misinformation on vaccines.<sup>16</sup> Protecting the right to adequate health care and improving the provision of health information are both important measures in light of the COVID-19 pandemic but also to protect the right to health more broadly.
18. In response to the COVID-19 global pandemic, Samoa implemented hard border closures and a state of emergency<sup>17</sup> which restricted freedom of movement and business trading hours.<sup>18</sup> Only two confirmed cases had been reported in the country by the end of 2021.
19. While much of the response to the pandemic has been timely and appropriate, some measures constitute an overreach of state powers, or have hindered other processes including consultations on the legal reforms to the judiciary mentioned above. Samoa's Prime Minister used the state of emergency to ban certain business and leisure activities on Sunday (trading and swimming) without any clear link to the health situation.<sup>19</sup>
20. In March 2020, the private details of a hospital patient with symptoms was leaked by Health officials. The person was later found not to have COVID-19, but she and her family experienced harassment and vilification.<sup>20</sup>

## CLIMATE CRISIS AND HUMAN RIGHTS

21. Reducing carbon emissions to net zero well before 2050 to keep global temperature rise below 1.5°C above pre-industrial levels is an obligation under human rights law to protect human rights from the adverse effects of the climate crisis.
22. Samoa, as a small island state, is facing such adverse impacts, including through rising sea levels and

increased severe weather events such as cyclones, that threaten people's way of life, livelihoods and security.

23. In 2015, Samoa committed to reaching 100% renewable energy targets by 2025.<sup>21</sup> In 2018 it was noted Samoa reached 60% renewable energy for the country.<sup>22</sup> In spite of being behind on its targets, commendable efforts have been made to reach the ambitious goals.

## RECOMMENDATIONS FOR ACTION BY THE STATE UNDER REVIEW

### **Amnesty International calls on the government of Samoa to:**

#### *The national human rights framework*

- Accede to the remaining core human rights treaties, including the International Convention on the Elimination of All Forms of Racial Discrimination, the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families and the International Covenant on Economic, Social and Cultural Rights and incorporate these into domestic law.
- Accede to the Optional Protocol to the Convention on the Elimination of All Forms of Discrimination Against Women, the Optional Protocol to the International Covenant on Economic, Social and Cultural Rights and the Optional Protocol to the Convention on Rights of Persons with Disabilities and incorporate these into domestic law.
- Ensure that Samoa meets its international human rights commitments, including by ensuring human rights apply to land disputes and that customary law is interpreted consistently with human rights obligations.

#### *The independence of the judiciary, right to a fair trial and access to justice*

- Invite the Special Rapporteur on the Independence of Judges and Lawyers to investigate, visit or report on the situation in the country and implement the recommendations which have already been communicated by the Special Rapporteur to the Samoan government.
- Amend or repeal the reforms to the legal and land titles system passed in December 2020 to ensure they comply with international human rights laws and standards on the independence of judges and lawyers, that they ensure the right to a fair trial, a right to appeal to an independent and impartial tribunal and equality before the law, and that there is a right to a remedy for all human rights violations.
- Publicly commit to and refrain from any acts of intimidation or threats to judges and lawyers, particularly as a result of their conduct in cases that relate to the Prime Minister, or because of any opinion or belief expressed on the new legal reforms.
- The Prime Minister should remove himself from exercising executive authority in any case where there is an actual or perceived conflict of interest, namely in the extradition case of Pauga whose extradition is being sought from Australia.

#### *Gender equality*

- Address gender inequality by the removal of barriers, whether cultural, economic, institutional or religious, preventing women from having an equal opportunity to gain access to positions of power at all levels (including in politics); the elimination of disempowering stereotypes, misogyny and violence against women in public and private spheres; parity for women in decision-making forums; and gender-sensitive mainstreaming of policymaking processes, including budgeting.

- Ensure the minimum age of consent for marriage is 18 years of age for both men and women.
- Protect universal access to safe abortion and related care and information, including through full decriminalization of abortion.
- Decriminalize sex work and related activities.

#### *Sexual Orientation and gender identity*

- Immediately repeal all laws that criminalize consensual same sex sexual activity for adults and strengthen anti-discrimination laws to ensure people are not discriminated against based on their sexual orientation or gender identity.

#### *Persons with disabilities*

- Invest in the development and implementation of a free medical health scheme for all persons with disabilities. Train more health professionals, strengthen the work of organisations working with persons with disabilities to provide physical and mental health services and improve access to specific health services.

#### *Adequate health care*

- Conduct a prompt, impartial, independent and effective inquiry into the causes of the measles outbreak in 2019, which disproportionately impacted on children and ensure that recommendations on right to a remedy and improving access to adequate health care and access to health information are implemented.
- Ensure the right to privacy is protected for all persons regardless of their health status and ensure that patients and health care workers are free from reprisals, intimidation, and threats.
- Ensure that COVID-19 responses only impose such restrictions on freedoms that conform with the principles of legality, necessity, proportionality and non-discrimination and not use the State of Emergency to implement policies which are designed to undermine human rights.
- Empower and support people to comply with public health regulations, including by ensuring access to public health information and by enabling people who are marginalised to satisfy their essential needs, and ensure that penalties are only imposed after other alternatives have proven, or are clear to be, unsuccessful.
- Develop a plan to ensure that the public health system is adequately funded and staffed and increase budgetary allocations to the public health sector as necessary.
- Ensure that economic recovery packages protect the right to an adequate standard of living of all persons, including people on lower incomes, those working in the informal sector, and others who may be at risk and most affected by the COVID-19 crisis and set up monitoring and review mechanism to assess their impact and amend them as necessary.
- Prioritise cooperation with international mechanisms aiming to ensure global access to vaccines and treatments.
- Ensure national and international criteria to guides the allocation of vaccines are consistent with human rights standards, pay attention to the needs of marginalised groups, and reflect the WHO's Equitable Allocation Framework. Civil society should be represented in any national and international decision-

making process.

*The climate crisis and human rights*

- Adopt and implement human rights-consistent adaption and disaster risk reduction measures that allow to adequately protect people from the foreseeable and unavoidable impacts of the climate crisis.
- Respect, protect and fulfil the right to information, participation and to effective remedies, as well as to freedom of expression and assembly in all climate policies and strategies in line with human rights law and Sustainable Development Goal 16 (peace, justice and strong institutions).
- Ensure that gender equality and the rights of members of marginalized groups receive adequate consideration in all climate and just transition policies and that people can participate in decisions affecting them.
- Ensure any COVID-19 response measures facilitate the transition away from fossil fuels and towards human rights consistent renewable energy and a zero-carbon economy and also provide for greater social protection and the creation of green and other new jobs that deliver sustainable and decent employment for all workers without discrimination of any kind.
- Seek international co-operation and assistance to continue to work towards its 100% renewable electricity goals by 2025.

- <sup>1</sup> Report of the Working Group on the Universal Periodic Review: Samoa, UN Doc. A/HRC/33/6, Recommendations 95.1-14 (Georgia, Italy, Portugal, Ukraine, Guatemala, Pakistan, Republic of Korea, New Zealand, United Kingdom of Great Britain and Northern Ireland, Uruguay, Turkey, Bolivarian Republic of Venezuela, Argentina, Australia, Ghana, France, Republic of Korea, Uruguay, Guatemala, Germany)
- <sup>2</sup> A/HRC/33/6, Recommendations 95.24-28 (Indonesia, Spain, Honduras, Tukey and Timor Leste)
- <sup>3</sup> A/HRC/33/6 – Para. 95.10-14 (Ghana, France, Republic of Korea, Uruguay, Guatemala, Germany) and Para 96.1-30 (Germany, Ghana, Costa Rica, Netherlands, Algeria, Montenegro, Portugal, Guatemala, Indonesia, Ireland, Italy, Namibia, France, Uruguay, New Zealand, Chile, Honduras, Denmark, Sierra Leone, Slovenia, Timor-Leste, Turkey, Ukraine, Argentina, Armenia, Brazil, Philippines, Cabo Verde, Cyprus, Egypt).
- <sup>4</sup> A/HRC/33/6 – Para. 95.15 (Costa Rica)
- <sup>5</sup> A/HRC/33/6 – Para. 95.5 (Uruguay)
- <sup>6</sup> Amnesty International, *Samoa: State of Emergency exploited to rush through laws that weaken the judiciary*, 4 June 2020, <https://www.amnesty.org/download/Documents/ASA4524742020ENGLISH.PDF>
- <sup>7</sup> Communication of the Special Rapporteur on the Independence of Judges and Lawyers to the Government of Samoa on Amendments to the Constitution, the Judicature Ordinance and the Lands and Titles Act, 26 May 2020, [https://www.ohchr.org/Documents/Issues/IJudiciary/Communications/OL\\_WSM\\_26\\_05\\_2020.pdf](https://www.ohchr.org/Documents/Issues/IJudiciary/Communications/OL_WSM_26_05_2020.pdf)
- <sup>8</sup> Radio New Zealand, *Samoa passes much criticised constitutional reforms*, 15 December 2020, <https://www.rnz.co.nz/international/pacific-news/432909/samoa-parliament-passes-much-criticised-constitutional-reforms>
- <sup>9</sup> International Bar Association, *IBAHRI condemns Samoan Government's proposed legislation as a disruption of the rule of law*, 18 June 2020, <https://www.ibanet.org/Article/NewDetail.aspx?ArticleUid=bb5ffd28-869e-4235-90d6-b2a1ded8052a>; Law Council of Australia, *Proposed constitutional amendments in Samoa concerning*, 8 May 2020, <https://www.lawcouncil.asn.au/media/media-releases/proposed-constitutional-amendments-in-samoa-concerning>; New Zealand Law Society, *Serious concerns raised about constitutional law changes in Samoa*, 4 May 2020, <https://www.lawsociety.org.nz/news/legal-news/serious-concerns-raised-about-constitutional-law-changes-in-samoa/>;
- <sup>10</sup> ABC, *Samoa's AG defends extradition request to Australia*, 12 October 2020, <https://www.abc.net.au/radio-australia/programs/pacificbeat/samoa-ag-defends-extradition-request-to-australia/12753500>
- <sup>11</sup> A/HRC/33/6, Recommendations 95.52 (Haiti), 95.54-5 (Italy), 95.57 (Maldives), 95.59 (Mexico), 95.62-63 (Spain), 95.65 (Uruguay), 95.69 (Guatemala) and 96.37 (Slovenia)
- <sup>12</sup> The Guardian, Eleanor Ainge Roy, *The silence is suffocating: family abuse 'epidemic' uncovered in Samoa*, 3 September 2019, <https://www.theguardian.com/global-development/2019/sep/03/family-abuse-epidemic-uncovered-in-samoa>; and Samoa Office of the Ombudsman and National Human Rights Institute, *Report into Family Violence in Samoa*, June 2018, <https://ombudsman.gov.ws/wp-content/uploads/2018/09/National-Inquiry-Report-into-Family-Violence-State-of-Human-Rights-Report-2018-English.pdf>
- <sup>13</sup> A/HRC/33/6, Recommendations 96.31-35 (New Zealand, Slovenia, Spain, United States of America, Canada)
- <sup>14</sup> Samoa Office of the Ombudsman and National Human Rights Institute, *State of Human Rights Report: Persons with Disabilities*, 2016, <https://ombudsman.gov.ws/wp-content/uploads/2019/01/2016-State-of-Human-Rights-Report-Disability-English.pdf>; and Hyunsook Siutaia, *Ombudsman addresses disability discrimination*, Samoa Observer, 25 April 2020, <https://www.samoaoobserver.ws/category/article/61869>
- <sup>15</sup> The Lancet, Adam T Craig, Anita E Heywood and Heather Worth, *Measles epidemic in Samoa and other Pacific islands*, VOLUME 20, ISSUE 3, pp273-275, 1 March 2020, [https://www.thelancet.com/journals/laninf/article/PIIS1473-3099\(20\)30053-0/fulltext](https://www.thelancet.com/journals/laninf/article/PIIS1473-3099(20)30053-0/fulltext)
- <sup>16</sup> BBC, *How a wrong injection helped caused Samoa's measles epidemic*, 2 December 2019, <https://www.bbc.com/news/world-asia-50625680>; WHO and UNICEF, *Samoa: WHO and UNICEF estimates of immunization coverage: 2019 revision*, [https://www.who.int/immunization/monitoring\\_surveillance/data/wsm.pdf](https://www.who.int/immunization/monitoring_surveillance/data/wsm.pdf)
- <sup>17</sup> Garda World, *Samoa: Authorities extend state of emergency until December 23 /update 14*, 21 November 2020, <https://www.garda.com/crisis24/news-alerts/402316/samoa-authorities-extend-state-of-emergency-until-december-23-update-14> and Samoa Government website, *State of Emergency Declared*, 20 March 2020, <https://www.samoagovt.ws/2020/03/state-of-emergency-declared/>
- <sup>18</sup> Amnesty International, *Public Statement: Pacific countries must not use Covid-19 to regress on human rights*, 15 April 2020, <https://www.amnesty.org/download/Documents/ASA0521442020ENGLISH.pdf>; and Amnesty International, *Samoa: State of Emergency exploited to rush through laws that weaken the judiciary*, 4 June 2020, <https://www.amnesty.org/download/Documents/ASA4524742020ENGLISH.PDF>
- <sup>19</sup> Talenei, *Samoa PM wants to ban Sunday trading*, 8 June 2020, <https://www.talenei.com/2020/06/08/samoa-pm-wants-to-ban-sunday-trading/>
- <sup>20</sup> Stuff NZ, *Coronavirus: First suspected case in Samoa returns negative test*, 22 March 2020, <https://www.stuff.co.nz/national/health/coronavirus/120477710/coronavirus-first-suspected-case-in-samoa-returns-a-negative-test>
- <sup>21</sup> Samoa's Intended Nationally determined contribution, submitted to United Nations Framework Convention on Climate Change at COP 21 in Paris, available at

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[https://www4.unfccc.int/sites/ndcstaging/PublishedDocuments/Samoa%20First/Samoa%20INDC\\_Submission%20to%20UNFCCC.pdf](https://www4.unfccc.int/sites/ndcstaging/PublishedDocuments/Samoa%20First/Samoa%20INDC_Submission%20to%20UNFCCC.pdf)

<sup>22</sup> Radio New Zealand, *Samoa making progress on renewable energy goal*, 24 May 2020, <https://www.rnz.co.nz/international/pacific-news/358097/samoa-making-progress-on-renewable-energy-goal>