

## Universal Periodical Review

### Samoa



### Right to Life and Related Human Rights Issues

September 2015

*“From the politics of taking life to the politics of affirming it”*

## Introduction

The Center for Global Nonkilling has a unique mission that is both inspirational for individuals and transformative for societies: *To promote change toward the measurable goal of a killing-free world by means open to infinite human creativity in reverence for life.*

The Center for Global Nonkilling (CGNK), successor of the Center for Global Non-violence (1988-2009), was founded by Glenn Paige, retired political science Professor and author of the book “Nonkilling Political Science”. The Center is a worldwide congregation of scholars working to create societies that do not kill. It has ECOSOC special consultative status since 2014.

## The right to life

All human rights are of equal importance, indivisible, interlinked and mutually reinforcing. They are universal legal and human values.

Compared to other human rights, the right to life has three specificities:

a. If dignity can be said to be the paramount human right because present when each and all human rights are fulfilled, *the right to life can be said to precede all other human rights*: if life is taken all other human rights are cancelled.

Conversely, granting and giving solid ground to the right to life and to the quality of life is the base needed for the peaceful progress and the proactive fulfillment and completion of all human rights.

b. There are no possible limitations or restrictions to the right to life: one is either alive, or not. Issues pertaining to the beginning and the end of life such as reproductive rights, abortion, suicides and euthanasia, as well as prenatal and genetic engineering should be dealt with in a preventive, humane and sustainable manner, in full dignity.

c. The right to life is also the duty not to kill. Therefore the right to life is a fully reciprocal right, granted to all and in need of being granted by all.

## Other human rights

All human rights are needed to fulfil a happy life. However, some of them may be more or less important either for the full realisation of the right to life or to avoid its breaches.

The Center for Global Nonkilling attaches a special importance to the *human right to peace* as human rights can only progress and be coordinated, be reciprocally fulfilled in a peaceful environment. Furthermore, peace and peaceful methods provide means to solve conflicts without aggravating them and, as may be in a reconstructive way. Conflicts solved peacefully make it easier to draw lessons learned and to design preventive policies from the overcoming of such difficulties.

The *human right to a healthy natural environment*, thus sustaining humanity and life on Earth, also deserve accurate attention.

Other specific human rights pertaining to the right to life will be addressed as needed.

## **Samoa and the right to life**

*Living happily*

Generally speaking, the constitution of Samoa, dated 1962, could use an update and a strong renewal of the country's commitment to the people, to peace, to human rights and to the well-being of all, duly taking in accounts Samoa's customs.

Article 5 of the constitution regarding the **right to life** reads (*emphasized added*):

### **RIGHT TO LIFE**

1. No person shall be deprived of his life intentionally, *except in the execution of a sentence of a court following his conviction of an offence for which this penalty is provided by Act.*

2. Deprivation of life shall not be regarded as having been inflicted in contravention of the provisions of this Article when it results from the use of force to such extent and in such circumstances as are prescribed by law and as are reasonably justifiable

a. *In defence of any person from violence; or*

b. *In order to effect an arrest or to prevent the escape of a person detained, if the person who is being arrested or who is escaping is believed on reasonable grounds to be in possession of a firearm; or*

c. *For the purpose of suppressing a riot, insurrection or mutiny<sup>1</sup>.*

a. Regarding the second part of subsection 1, as the death penalty was abolished in 2004<sup>2</sup>, so shall the constitution reflect the intent of the people and of State of Samoa to be examples of life's respect by never imposing death.

1. **Therefore, CGNK recommends that the Constitution of the State of Samoa be changed as soon as may be to remove this constitutional remnant and definitely bar the possibility of sentences.**

2. **Similarly, as accepted in the first UPR cycle and if not done as now, Samoa should swiftly ratify the Second Protocol of the International Covenant on Civil and Political rights regarding the abolition of the death penalty.**

b. Regarding subsection 2 of article 5, CGNK considers that the exceptions provided for are too wide and do not reflect either progresses made towards the non-lethal use of force and the jurisprudence regarding proportional self-defence. Moreover, the State should do its utmost to protect, promote and highlight the value life and of the right to life. Therefore the Constitution should foremost reflect the value of life and not, or at least not only, the exceptions allowing for its taking. Practically, the duty to respect life and to inflict as less damage as possible to physical and mental integrity should be recalled in the constitution long before permitting any uses of force, their consequences on the right to life and the duty to take proportionate or even non-violent actions in cases where life might be threatened, even if only to protect it. As an example, of a constitutional disposition on the use of force, please let us quote the constitution of the local State of Geneva (2012): "*In conflictive situations, it is a priority to avoid the use of force, or to limit it. Concerned persons should concur*"<sup>3</sup>.

Finally, it must be noted that any use of force by an authority, if lethal should automatically be submitted to a judicial body or for cases of minor consequences to an independent control (i.e. the ombudsman).

3. **CGNK recommends that the Constitution and the legislation of Samoa be amended to highly reflect the value of life, to limit possible exceptions to the respect of the right to life and to submit any official use force to a judicial or independent authority.**

## Preventing breaches of the right to life

### *Security to live well*

If life is highlighted as a value and every person is confident in its entitlement to the right to life, breaches will be less frequent and hopefully will diminish until they disappear totally. To fully respect the right to life, breaches can only be *prevented*.

We here present some aspects of this prevention work.

Considering that the existence of an army restrains, or may restrain the construction of a lasting peace, hinders therefore the guarantee of the right to life and highly limits the human rights of civilians and soldiers alike, CGNK salutes the absence of an army in Samoa. May it be a springboard for peace improvements and achievements, in the country as worldwide!

However, the constitution of Samoa has no dispositions regarding peace (except the right to peaceful assembly (article 13) or forbidding war and its tools, armies and weapons, or encouraging peaceful international relations and friendly relations among nations or peaceful settlements of disputes.

This could be changed, moreover as Samoa has a lasting tradition of non-violence, dating back to the 1930<sup>4</sup>.

**4. CGNK therefore encourages Samoa, in the course of the revision of its constitution, to express through it a strong commitment to peace in all its forms and developments.**

**5. Recalling the declaration of the Human Rights Council on the Impact of arms transfers on human rights in armed conflicts (24/45, 27<sup>th</sup> of September 2013<sup>5</sup>), the high quality of the peace treaties already signed by Samoa or more generally acknowledging the negative impact of armed conflicts on human rights, CGNK encourages Samoa to make a strong effort to ratify as soon as may be all peace, settlement of disputes, disarmament and humanitarian treaties to which it is not yet party, including as examples, recognizing the compulsory jurisdiction of the International Court of Justice or ratifying the deep sea bed treaty and the Antarctic treaty.**

**6. CGNK highly encourages the State of Samoa to report on the progresses and achievements made for the advancement of peace.**

Samoa does not have national action plans for all the types of violence, including domestic violence, as outlined in the World Health Organization's "Global Statistics Report on Violence Prevention 2014"<sup>6</sup>.

**7. CGNK encourages Samoa to design and implement such actions plans without delay.**

**8. As soon as the constitution will be changed, CGNK also recommend that the *design, implementation and evaluation of peace and human rights policies, including education to peace and human rights* be made mandatory States duties through a comprehensive disposition set therefore in the Constitution.**

CGNK salutes the low homicides rate of the country (3.7/100.00, while world average is 6.6)<sup>7</sup> and encourages Samoa to share inland and abroad its capacity to offer a greater respect for life and the lessons learned thereof.

9. **However, we still recommend a full adhesion by Samoa to all future Sustainable Development Goals, including goal n° 16.1: “[to] significantly reduce all forms of violence and related death rates everywhere”<sup>8</sup>.**

Samoa has a strong law against firearms, and therefore a low average of killings due to firearms<sup>9</sup>. Nevertheless, we salute the signing by Samoa of the Geneva Declaration on armed violence and development in 2008 and its strong commitment against firearms.

10. **We encourage Samoa to share its experience regarding firearms with less fortunate countries.**

The prevention of suicides is a full part of the prevention of injuries to life or integrity. Valuing life as a right is part of prevention of suicides policies. The data on suicides in Samoa is lacking. However and according to press reports, though the problem may be diminishing, it is serious.

11. **CGNK therefore strongly recommends to the Government of Samoa implementing policies valuing life and preventing suicides.**

CGNK salutes the ratification by Samoa, since the previous UPR, of the convention on enforced disappearances.

Reporting on the progress of the respect of the right to life is essential.

12. **The Center for Global Nonkilling encourages the State of Samoa – and all States – to systematically report, in the national UPR report, on the progress of the respect of the right to life.**

### **Fulfilling the right to life**

For life to be lived with some degree of satisfaction and to the greatest possible life span, other rights need to be fulfilled. We mention some of them here.

As already noted during the previous UPR cycle, there is no human rights regional body – ideally a judicial one – in the Pacific region.

13. **CGNK recommends to the State of Samoa as well as to all States in the Pacific Region to set up as soon as may be a regional human rights legal mechanism.**

CGNK salutes the extension of the functions of the ombudsman to cover human rights issues. However, it would have been appreciated if the consultations regarding the upcoming UPR review would have been made public and had taken place soon enough before the deadline for stakeholders submissions to allow a wider participation<sup>10</sup>.

14. **CGNK recommends that the State of Samoa, as all States should, starts the consultation on the UPR process at least a year before the review.**

15. **CGNK also recommends to the State of Samoa to issue an intermediary report allowing stakeholders to assess progress and needs between UPR cycles.**

Gender equality for all is not guaranteed in the constitution of Samoa. Many recommendations were made regarding domestic violence during the previous UPR cycle. Updating the constitution is a necessary first step to show that the problem is being addressed, starting by the basic structure of public institutions: the constitution. Here again, the constitution should contain a policy mandate. Moreover, gender equality and gender respect should be mainstreamed through all governmental activities.

16. **As domestic violence usually causes more deaths of women than men and in order for all to equally enjoy the right to life, Samoa needs to mainstream gender equality in all its policies.**

Political rights, as mentioned in article 25 of the Covenant on Civil and Political rights can be granted either through electing representatives or directly. Offering the greatest possible participation entails the people to know therefore that they are, as anyone, responsible for the good and the progress of all.

17. **Therefore, CGNK encourages the government, through the constitution, to grant direct participation rights to the people, such as the rights of referendum on laws and treaties and the right of initiative to amend the constitution.**

### Celebrating life

To cherish life is showing that life is the greatest treasure given to humanity. Preserving and perpetuating life, granting to all good conditions to live fully and in full responsibility for the good of everyone, achieving a nonkilling world, is the best possible expression of gratitude one can give for receiving life. Giving life and a good life is the best gift every person can make do to humanity, to future generations and to itself. Making life worth living it, for all and by all, sharing life in dignity in and on a sustainable world is use of our human qualities.

It has been a great pleasure and a treasure to participate by this contribution to the second Universal periodic review of Samoa, thus celebrating the natural gift of life granted to all, by a conscious effort, with our humble means, towards the improvement in Samoa as anywhere of the respect for life and of the progress of the quality of life for each and all, in peace and happiness.

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<sup>1</sup> [https://www.constituteproject.org/constitution/Samoa\\_2013?lang=en#30](https://www.constituteproject.org/constitution/Samoa_2013?lang=en#30)

<sup>2</sup> [http://www.parliament.gov.ws/new/wp-content/uploads//01.Acts/Acts%202004/Crimes\\_Abolition\\_of\\_Death\\_Penalty\\_Amendment\\_Act\\_2004\\_-\\_Eng.pdf](http://www.parliament.gov.ws/new/wp-content/uploads//01.Acts/Acts%202004/Crimes_Abolition_of_Death_Penalty_Amendment_Act_2004_-_Eng.pdf)

<sup>3</sup> Article 184, §3 : “Les situations conflictuelles sont traitées en priorité de manière à écarter ou limiter le recours à la force. Les personnes concernées sont tenues d'apporter leur concours”. Translation by CGNK. <https://www.admin.ch/opc/fr/classified-compilation/20132788/index.html#a184>

<sup>4</sup> Field Michael J., *Mau: Samoa's Struggle against New Zealand Oppression*, Auckland, Reed, 1984.

<sup>5</sup> [http://ap.ohchr.org/documents/dpage\\_e.aspx?si=A/HRC/RES/24/35](http://ap.ohchr.org/documents/dpage_e.aspx?si=A/HRC/RES/24/35)

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- <sup>6</sup> Butchart, Mikton. *Global Status Report on Violence Prevention 2014*. Luxembourg: WHO. Print. Pages 184 and statistical annexes, <http://www.undp.org/content/dam/undp/library/corporate/Reports/UNDP-GVA-violence-2014.pdf>
- <sup>7</sup> Butchart, Mikton. *Global Status Report on Violence Prevention 2014*. Luxembourg: WHO. Print. Pages 235 (2012).
- <sup>8</sup> <https://sustainabledevelopment.un.org/sdgsproposal>
- <sup>9</sup> [http://www.paclii.org/ws/legis/consol\\_act/ao1960121](http://www.paclii.org/ws/legis/consol_act/ao1960121)
- <sup>10</sup> [http://www.ombudsman.gov.ws/index.php?option=com\\_content&view=article&id=118:universal-periodic-review&catid=51:our-work&Itemid=150](http://www.ombudsman.gov.ws/index.php?option=com_content&view=article&id=118:universal-periodic-review&catid=51:our-work&Itemid=150)