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SUBMISSION FOR NEW ZEALAND UNIVERSAL PERIODIC REVIEW

BY SAMOA SOLIDARITY INTERNATIONAL GROUP GLOBAL NEW ZEALAND INCORPORATED

(1) Introduction

Samoa Solidarity International Group Global New Zealand Incorporated (“SSIGG NZ”) makes the following submissions for New Zealand’s Universal Periodic Review (“UPR”), as part of the UPR Working Group’s 32nd session, due to be held between January-February 2019.

The relationship between the New Zealand Government and the Pacific has a deep history of colonisation, administration and somewhat “co-operation”. Much of the Pacific was colonised by Western countries, in particular France,¹ Germany, the United Kingdom, the United States of America,² Australia³ and New Zealand.⁴ The first country in the Pacific to gain independence from such a Western Power, was Samoa (formerly known as ‘Western Samoa’) who became independent of New Zealand’s administration in 1962. Under New Zealand’s administration, tragic events arose which still resonate with Samoans both in Samoa and overseas, such as the 1918 influenza epidemic which killed a quarter of the population in Samoa due to the careless actions by New Zealand administrators.⁵

The fight for independence from the New Zealand administration is still a highly-celebrated event in Samoa and amongst Samoans overseas on the 1st June. The peaceful Mau movement, which pushed for Samoan independence from New Zealand administration in the 1920s, is still celebrated and remembered amongst Samoans as a means of never forgetting our struggle for self-determination and sovereignty. New Zealand’s relationship with Samoa, was one of where there was strong opposition from Samoans to European colonial rule. Compare this to New Zealand during the 1970s, where that European colonial rule presented its ugly self through “dawn raids” upon Polynesians, particularly Samoans. The ‘Dawn raid’ period during the 1970s under the New Zealand government, which was against Pacific Island overstayers, led to criticisms from human rights groups and was described as a “dark shadow over race relations”⁶ in New Zealand. Former Prime Minister of New Zealand, the right Hon. Helen Clark, summed up the immigration policy as being one which was racist, having targeted Maori and Polynesians:

“The dawn raids were shameful because, in essence, they set out to pick up anyone who didn’t look like a Pakeha or Palangi New Zealander. They swooped on people who were

¹ French Polynesia and New Caledonia, are still under French administration.

² The Marshall Islands, American Samoa.

³ Nauru was under Australian administration.

⁴ Administered Samoa which is now independent. But still administers Tokelau, Niue and Tuvalu.

⁵ “The 1918 influenza pandemic” at <https://nzhistory.govt.nz/culture/1918-influenza-pandemic/samoa> : “On the 7th November 1918, the New Zealand passenger and cargo ship *Talune* arrived at Apia from Auckland. On board were people suffering from pneumonic influenza, a highly infectious disease already responsible for hundreds of thousands of deaths around the world. Although the *Talune* had been quarantined in Fiji, no such restrictions were imposed in Samoa. Sick passengers were allowed to disembark”, killing at least 8500 people in Samoa or 22% of Samoa’s population at the time.

⁶ See <http://www.iwinaus.org/nzs-dawn-raid-history/>.

Maori, they swooped on many Pasifika people who had absolutely lawful residence in New Zealand.”

Because of the long history, albeit one of discrimination and colonisation, between the New Zealand Government and Samoan people, the assistance provided by New Zealand to Samoa and Samoans residing in New Zealand, ought to be assessed. Has the New Zealand Government conducted itself, in a way which remedies past-wrongs? What human rights-issues affecting Samoans in Samoa and in New Zealand, has the New Zealand government addressed? Has the foreign aid and other financial-related assistance by the New Zealand government for Samoa and/or Samoans, satisfactorily taken into account the history of New Zealand’s administration on Samoans? These issues will be highlighted with recommendations to follow.

In terms of international obligations, the New Zealand government, being a party to the ICESCR, are obliged to ensure international action with its Pacific neighbours, are reflective of the New Zealand government’s stance on human rights, particularly those in the ICESCR. We refer to article 23 which states:

Article 23

The States Parties to the present Covenant **agree that international action for the achievement of the rights recognized in the present Covenant** includes such methods as the conclusion of conventions, the adoption of recommendations, the furnishing of technical assistance and the holding of regional meetings and technical meetings for the purpose of consultation and study organized in conjunction with the Governments concerned.

New Zealand also has one of the biggest Pacific peoples ethnic group in the world, whereby in 2013 they made up 7.4% of the New Zealand population (295,941 people).⁷ Of the Pacific peoples’ ethnic group, the Samoan ethnic group remained the largest Pacific ethnic group, being 48.7% of the Pacific peoples’ population (144,138 people).⁸ In comparison to Samoa where the population is approximately 195,843,⁹ the population of Samoans in New Zealand may in future outnumber the amount of Samoans living in Samoa. This is another reason why it is important to assess any human rights issues for Samoans, be it in New Zealand or Samoa, which the New Zealand government can influence or have a direct input into.

Our group, Samoa Solidarity International Group Samoa Solidarity International Group Global New Zealand Incorporated Society (“SSIG Global NZ Inc”) is an incorporated Society, who aim to educate our Samoan community about their legal and fundamental rights.¹⁰ Our society is based in New Zealand, given we are incorporated in New Zealand as a non-profit organisation/non-government organisation. It is only appropriate that we make these

⁷ Statistics New Zealand.

⁸ Statistics New Zealand.

⁹ “Population count hits 195,843” by Ioana Tupa’i, 4th November 2017, Samoa Observer.

¹⁰ In our Constitution registered with the New Zealand Ministry of Business, Innovation and Employment, two of our objectives are: (1) to educate our Samoan community about their human rights and freedoms in Samoa, with particular regard to concerns over customary land and freehold land; and (2) to promote, encourage and support programmes and workshops which inform our Samoan community about social, economic, cultural and environmental issues. These particular objectives incentivize our incorporated society to make these submissions to the UN UPR on the New Zealand government.

submissions to the UN UPR about the New Zealand government's role, in ensuring that the human rights of Samoans in Samoa and in New Zealand, are fulfilled and enjoyed.

(2) Treaties, conventions, declarations, that the New Zealand government are a party to, relevant to the Samoan community in New Zealand and in Samoa

- a. International Convention on Civil and Political Rights 1966. (ICCPR)
- b. International Covenant on Economic, Social and Cultural Rights 1966 (ICESCR)
- c. The Treaty of Friendship 1962
- d. United Nations Convention on the Rights of the Child 1993 (UNCROC)
- e. United Nations Declaration on the rights of Indigenous Peoples 2007 (UNDRIP)

(3) Status of the New Zealand Government with Samoa

(A) New Zealand government's international obligations to Samoa

The Ministry of Foreign Affairs of New Zealand ("MFAT"), is the ministry responsible for liaising with Samoa, in the hope of advancing the New Zealand Government's international priorities.¹¹ Their aim is to interpret changes, provide advice to the Government on their implications and then act to promote and protect New Zealand's interests, by building connections and influence in other countries.¹² This is how they are publicly-described, hence arguably they could influence the human rights' situation in the countries they have built a connection with. For Samoa, that connection or relationship, has seen the New Zealand government provide assistance with:¹³

- Samoa's defence and police force,
- Aid through The New Zealand Aid programme to boost productivity through developing tourism and renewable energy, and improvements to health and education.¹⁴
- Employment such as the Recognised Seasonal Employer Scheme

Such action by MFAT is supported by article 2 and 23 of the ICESCR. Pursuant to article 2(1) of the ICESCR, the New Zealand government undertakes to take steps, individually and through international assistance and co-operation, especially economic and technical, to the maximum of its available resources, with a view to achieving progressively the full realization of the rights recognised in the ICESCR by all appropriate means, including particularly the adoption of legislative measures.

Furthermore, the New Zealand government has undertaken to guarantee that the rights enunciated in the ICESCR will be exercised without discrimination of any kind as to race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status (refer to article 2(2) of the ICESCR).

¹¹ See MFAT website www.mfat.govt.nz

¹² See MFAT website.

¹³ See MFAT website.

¹⁴ According to MFAT's website, MFAT works closely with the Samoan Government, in the hope of increasing economic benefits from tourism, expanding access to affordable, reliable and clean energy, improving knowledge skills and basic education; strengthening law and justice systems; and improving the health of people in the Pacific.

Given the obligations pursuant to article 2, it is submitted that the New Zealand government, can, through its international assistance such as foreign aid, utilize its maximum resources to ensure the full realization of the rights recognised under the ICESCR. Many New Zealand citizens and permanent residents, reside in Samoa, thus they too must also be taken into account by the New Zealand government when ensuring the ICESCR has been followed.

(B) *New Zealand government and Samoa – Treaty of Friendship*

After Samoa attained independence in 1962, a Treaty of Friendship was signed between both nations in August 1962. The treaty contains seven articles which include the following relevant articles:

- Relations between both shall be **governed by a spirit of close friendship**¹⁵
- The two **shall consult** each other on **matters of mutual interest and concern**, where appropriate.¹⁶
- Each shall **ensure that citizens** of the other living within its territory are, in accordance with normal practice between friendly states, **given equitable treatment and full legal protection and access to the Courts**.¹⁷
- Both **shall continue to work together promoting the welfare of the people of Samoa**, with particular regard to New Zealand considering sympathetically requests from the Government Samoa for technical, administrative and other assistance.¹⁸
- The New Zealand Government shall, for as long as the Government of Samoa wishes, and in such a manner that will not impair the Samoan Government’s right to form its own foreign policies, afford assistance to the Samoan Government in the conduct of its international relations.¹⁹

This treaty is exclusive to New Zealand and Samoa, placing the New Zealand government in a ‘caregiving’ role towards the people of Samoa. Furthermore, much of the Samoan Legal System is similar to New Zealand, including (but not limited to), the highest court in Samoa being the Court of Appeal whereby the judiciary are selected from New Zealand, and much of the legislation in Samoa are based on New Zealand legislation.

(4) Current status of Samoans living in New Zealand

Domestic legislation and international treaties

In general, fundamental human rights for those in New Zealand are protected under the New Zealand Bill of Rights Act 1990 (“NZBORA”) and the Human Rights Act 1993, which are largely based on the ICCPR and the ICESCR. For Samoans living in New Zealand, particularly those who are Samoan citizens (whether they are born in Samoa or not), their fundamental human rights are further protected by the Treaty of Friendship.

¹⁵ Article 1, Treaty of Friendship 1962

¹⁶ Article 2, *ibid.*

¹⁷ Article 3, *ibid.*

¹⁸ Article 4, *ibid.*

¹⁹ Article 5, *ibid.*

However, laws such as the Citizenship (Western Samoa) Act 1982 still exist, which has been described as New Zealand’s most racist law.²⁰ This law was passed as a response to the Privy Council’s (the highest court in New Zealand in 1982) decision, for Falema’i Lesa who sued the New Zealand government, arguing that she was not overstaying but was a New Zealand citizen. Samoa was under the administration of New Zealand where during that time, “a person who was a British subject immediately before the date of commencement of this (citizenship) Act shall on that date become a New Zealand citizen if he was born in Western Samoa.” The Privy Council agreed which ruled that the law which governed British nationality meant that those born in Western Samoa were British subjects and those who were alive in 1948, automatically became New Zealand citizens. The New Zealand parliament in 1982, as a result of the *Lesu* Case, quickly passed the Citizenship (Western Samoa) Act 1982, which denies Samoans born between 1924 to 1948, to have New Zealand Citizenship. In the past, petitions²¹ have been made to the New Zealand government to repeal this racist law as it only targets Samoans and has overshadowed New Zealand’s role on human rights issues on an international stage with “a rotting smell in the closet at home”.²² This law still exists after nearly 36 years of its enforcement – this in spite of:

- The NZBORA which affirms New Zealand’s commitment to the ICCPR,²³
- The Human Rights Act 1993, where it clearly states that discrimination based on race is prohibited²⁴
- The Treaty of Friendship²⁵
- New Zealand’s obligations under ICESCR²⁶.

(5) Relevant human rights issues

(A) *Matters in Samoa, also affecting New Zealand citizens and/or permanent residents:*

i. Customary Land Rights

In 2008, Samoa’s parliament passed the Land Titles Registration Act 2008 (“LTRA2008”). It introduced the Torrens’ Land System into Samoa, whereby customary land can be registered under an individual’s name (namely the ‘sa’o’ of

²⁰ “The Citizenship (Western Samoa) Act is New Zealand’s most racist immigration law. Why is it still on the books?” by Graeme Edgeler, 7 February 2017, The Spinoff.

²¹ A 100,000 signature petition was presented to a New Zealand Parliamentary Select Committee in May 2003, seeking the Act to be repealed and there were claims, in particular by lawyer Maiava Visekota Peteru, that the Immigration Quota allowed by the New Zealand Government for Samoans to enter New Zealand was a “farce” and that Samoan families were adopting out their children to become New Zealand citizens and live a “better life” in New Zealand – see “Samoans hear plea to end law that ‘should make NZ ashamed’”, by Theresa Garner, 9 May 2003, New Zealand Herald.

²² “Samoan citizenship under scrutiny”, 8th May 2003, www.tvnz.co.nz

²³ Though the NZBORA is not entrenched legislation, it still does enshrine the ICCPR, thus article 26 of the ICCPR is applicable to the New Zealand government which states: “All persons are equal before the law and are entitled without any discrimination to the equal protection of the law. In this respect, the law shall prohibit any discrimination and guarantee to all persons equal and effective protection against discrimination on any ground such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status”

²⁴ See section 21(1)(e) Human Rights Act 1993, which states that race is a prohibited ground to discriminate.

²⁵ See article 3 with reference to Samoan citizens being “given equitable treatment” by the New Zealand government, whilst article 4 places an onus on the New Zealand that they shall continue to work together to promote the welfare of the people of Samoa.

²⁶ See article 2(2) of the ICESCR where the New Zealand government has made an undertaking to guarantee the rights in the ICESCR, without discrimination of any kind as to race.

the family). This legislation, and its following amendments,²⁷ are a huge blow to the traditional and customary land ownership that has existed in Samoa for many years. It places customary land, to be registered in one person's name in the hope of that person being a genuine trustee for his or her family and extended family, allowing them to occupy the land. However, the current law allows customary land to be to anyone without consulting with those who are ideally and culturally entitled to occupy the land (that is, family and extended family). It is also goes against intergenerational justice, given if leases were to be granted (and some have already been granted) where the lessee would have exclusive use of the customary land for many years, future generations are not permitted to occupy and enjoy that land thus results in intergenerational injustice.

Interestingly, the current acting Prime Minister and Minister of Foreign Affairs, the Hon. Vaovasamanaia Winston Peters, recently commented on Samoa's controversial LTRA 2008 as follows:²⁸

“In my country, you've seen a dramatic transfer of land and houses to foreign interests....It has driven the price up so bad that people are now buying in Auckland houses that are 12 times their annual income....It used to be three and a half times. Twelve times means that a lot of these people, mainly in the bottom of the economy - Maori and Pasefika - will never ever own their own homes and that's a tragedy....They're not making any more land around the world and if you go to the Cook Islands, you can't find land there, you can lease it. Many parts of the Pacific, you can only lease.....**I commend the Island people for standing up for themselves....I recommend people to look very carefully about what happened to New Zealand because we're a new government and we're stopping it. No more optional 'buy now' because we've got to look after our own people first.**”

It should be noted that this is a law which was passed through parliament, without a referendum being held as it ought to have been as per the Constitution of Samoa.²⁹ It is therefore an unconstitutional law and has been criticized by numerous human rights groups and individuals.³⁰

Given New Zealand's relationship with Samoa, and the recent comments made by our current Minister of Foreign Affairs, the New Zealand government can make an impact in bringing about change to unconstitutional laws in Samoa which affect one of the most important human rights in Samoa: the right to their customary land. This is also a right consistent with the ICESCR under article 11 where one has a right to an adequate standard of living³¹ and that states parties, which includes the New

²⁷ Land Titles Amendment Act 2015 (Samoa).

²⁸ “They're not making any more land,” deputy P.M. Vaovasa warns”, by Elizabeth Ah-Hi, 08 March 2018, Samoa Observer.

²⁹ See articles 102 and 109 of the Constitution of the Independent State of Samoa 1960, where any amendment to the constitution, particularly to article 102 which refers to the alienation of customary land, ought to have a referendum as per article 109 where at least two-thirds of those who are eligible to vote, would support such an amendment.

³⁰ For example, the O Le Siosiomaga Society, Fiu Mataese Elisara, the former Head of State for Samoa Tui Atua Tupua Tamasese Efi, Dr Iati Iati and Samoa Solidarity International Group Global Samoa and New Zealand.

³¹ Note in article 11, state parties recognize the right of everyone to an adequate standard of living, which includes adequate food, clothing and housing and to the continuous improvement of living conditions. 1. The States Parties to the present Covenant recognize the right of everyone to an adequate standard of living for himself and his family, including adequate food, clothing and housing, and to the continuous improvement

Zealand government, must take appropriate steps to ensure the realization of this right, recognizing to this effect the essential importance of international co-operation based on free consent. This is where the New Zealand government can make foreign aides conditional on any improvements by the Samoan government to ensure customary land rights are not removed and more importantly that the Samoan government are not acting unconstitutionally, which is what has occurred with the passing of the LTRA 2008. Furthermore, based on the Treaty of Friendship and the ICESCR, the New Zealand Government can “promote the welfare of the people of Samoa” by imposing conditions on foreign aid granted to the Samoan government – where there is any risk of any laws being passed, that are likely to be unconstitutional, there should be educational programmes amongst the communities so they can understand their legal rights in light of such prospective laws. There should also be accountability monitored by the New Zealand government in granting such foreign aid.

New Zealand is also a party to the UN Declaration on the Rights of Indigenous People (“UNDRIP”). This declaration protects indigenous people’s rights to their customary land as per article 10, which states that indigenous peoples shall not be forcibly removed from their lands and any relocation should be done with free, prior and informed consent of the indigenous peoples. Furthermore, any relocation must be reached by agreement on just and fair compensation and, where possible, with the option of return. The LTRA 2008 goes against this article, which the New Zealand government support hence they are a party to UNDRIP. The LTRA 2008 did not have the informed consent of its indigenous people, particularly as article 109 of the constitution of Samoa was not followed, in passing the LTRA 2008. Their action therefore goes against article 10 of UNDRIP. The New Zealand government ought to not be seen as supportive of such conduct by the Samoan government and seek the repeal of this unconstitutional law.

Recommendation: The New Zealand Government, through MFAT, should impose stronger conditions on foreign aid granted to the Samoan Government, given the passing of the unconstitutional law being the LTRA 2008. New Zealand cannot be seen as a champion for human rights, yet condone the Samoan Government’s treatment of its people by enforcing an unconstitutional law. It goes against the heart of the Treaty of Friendship, as well as article 11 of the ICESCR, which the New Zealand government is a party to and must utilize its resources (including foreign aid conditions) to demand Samoa to repeal the LTRA 2008 as it goes against constitutional human rights of the people of Samoa.

of living conditions. The States Parties will take appropriate steps to ensure the realization of this right, recognizing to this effect the essential importance of international co-operation based on free consent.

2. The States Parties to the present Covenant, recognizing the fundamental right of everyone to be free from hunger, shall take, individually and through international co-operation, the measures, including specific programmes, which are needed:

(a) To improve methods of production, conservation and distribution of food by making full use of technical and scientific knowledge, by disseminating knowledge of the principles of nutrition and by developing or reforming agrarian systems in such a way as to achieve the most efficient development and utilization of natural resources;

(b) Taking into account the problems of both food-importing and food-exporting countries, to ensure an equitable distribution of world food supplies in relation to need.

ii. Children's rights in Samoa

Recently in Samoa, amendments were introduced in Samoa's last Parliament session to allow the use of reasonable force with the Minister of Education, Sports and Culture, Loau Keneti Sio declaring that "There is a fine line between reasonable force and assault!".³² Samoa's government has recently discussed the return of corporal punishment in schools, which goes against Samoa's Crimes Act 2013 and also goes against the rights in the UN Convention on the Rights of the Child ("UNCROC").³³ Any violence against children, including corporal punishment, violates a child's human dignity and their right to physical integrity. It also can prevent children from attaining their maximum potential, by putting their health and development at risk. It is in the best interests of the child, if corporal punishment were to remain illegal.

New Zealand's government, through MFAT, are already involved with Samoa in the hope of promoting and improving knowledge skills and basic education amongst Samoans.³⁴ Perhaps the New Zealand government can look at imposing foreign-aid conditions upon Samoa, to ensure that corporal punishment remains abolished and in-line with the UNCROC. Even members of the judiciary of Samoa, have already spoken out against the Samoan Government's introduction of a corporal punishment policy,³⁵ so perhaps this gives support to the New Zealand government should they wish to take action in condemning any suggestion for the return of corporal punishment.

Recommendation: The New Zealand Government, through MFAT, should make foreign aid, specifically for the education sector, conditional on the Samoan Government to not introduce corporal punishment. It should remain illegal under the Crimes Act 2013 (Samoa). Furthermore, any foreign aid granted by the New Zealand government to Samoa, should develop programmes to assist Samoans to find other alternatives to physical discipline, that are consistent with the rights to dignity and best interests and well being of the child, as per UNCROC.

(B) Matters in New Zealand affecting Samoans:

³² "Judge says policy a step backwards", by Joyetter Feagaimaali'i-Luamanu, 05 July 2018, Samoa Observer.

³³ Article 28(2) of the UN Convention on the Rights of the Child 1989, where states Parties must take all appropriate measures to ensure that school discipline is administered in a manner consistent with the child's human dignity and in conformity with the present Convention.

³⁴ Refer to MFAT website on its relationship with Samoa under the New Zealand Foreign Aid Programme.

³⁵ "Judge says policy a step backwards", by Joyetter Feagaimaali'i-Luamanu, 05 July 2018, Samoa Observer, where Justice Vui Clarence Nelson, as a member of the U.N. Committee of the Rights of the Child, who stated: "It's recorded in our meetings that our (Samoa) delegation went to Geneva; and reported that corporal punishment will be abolished in Samoa and schools and they are working into dealing with families. Now we seem to be going backwards on what Samoa has promised to eliminate in the first place...this law is a retrograde step. We're going backward. We were heading forward but now we're going back and this law allows teachers to physically discipline their students in a reasonable manner based on their judgment."

a. Samoan citizens being New Zealand Citizens

As aforementioned, the Citizenship (Western Samoa) Act 1982, still exists in New Zealand. It is a law purely based on race and citizenship, where Samoan citizens born, between 1924 to 1948, are denied being New Zealand Citizens through this legislation. Petitions have been signed, human rights groups and individuals have spoken out against this racist law, but the New Zealand government have not done little to get rid of this discriminatory piece of legislation. Their quota, through its Ministry of Immigration, for Samoans to come to New Zealand, is insufficient to remedy the injustice caused by this legislation. It needs to be repealed.

Recommendation: The New Zealand government must repeal the Citizenship (Western Samoa) Act 1982. Alternatively, the New Zealand Ministry of Immigration should, at the very least, change its policies in allowing Samoan citizens who were born between 1924 to 1948, and their descendants, to travel freely between Samoa and New Zealand without a visa, given the case of *Lesā*, which the Privy Council confirmed that Samoans were British Subjects who therefore attained New Zealand citizenship automatically under New Zealand administration.

Conclusion

The New Zealand Government, can do much more than what they are doing to assist Samoans living in New Zealand and Samoa, in ensuring their human rights are fulfilled and enjoyed at the highest attainable standard. MFAT could, through foreign aid provided to Samoa, influence the Samoan government to (a) repeal their unconstitutional LTRA 2008 and (b) prevent the return of corporal punishment for children. The special relationship between the New Zealand government and the Samoan government, under the ICESCR and more importantly the Treaty of Friendship, gives the New Zealand government flexibility to ensure Samoa's government conducts itself in a manner consistent with its 1962 Samoa Constitution and international conventions or declarations such as the ICESCR, ICCPR, UNCROC and UNDRIP. The New Zealand Government also needs to take steps towards the repeal of the Citizenship (Western Samoa) Act 1982 as it is a racist law. Alternatively, Samoans travelling from Samoa to New Zealand, should not be required to have visas given their citizenship status ought to be that of New Zealand citizenship.