

Samoa Solidarity
International Group (SSIG)
Samoa

Submissions to the United
Nations Universal Periodic
Review of Samoa

17 March 2021

SUBMISSIONS BY SSIG SAMOA
FOR THE UNITED NATIONS UNIVERSAL PERIODIC REVIEW OF SAMOA

1. Introduction / Executive Summary of SSIG Samoa

1.1. Objectives

1.1.1. The Samoa Solidarity International Group based in Samoa, also known as SSIG Samoa Incorporated Society (herein referred to as "SSIG Samoa") is a society that was incorporated in 2018. It is a non-government and non-profit organisation whose objectives include:

- a) Advocating for justice, fairness, equality, human rights, equity and safety, for the betterment of Samoans and Samoa.
- b) To provide educational programmes for those in Samoa regarding their rights, interests and entitlements pertaining to their lands.
- c) To develop policies, programmes, workshops and other trainings that are beneficial to the people of Samoa.
- d) To provide assistance to anyone with a dispute regarding their lands, human rights and other related-grievances, as a way to promote their sense of wellbeing, safety, progress, understanding and confidence within themselves.
- e) To work with anyone, regardless of gender, status, economic capacity or whatsoever, regarding issues they have for their benefit, empowerment, progress and self-development.

1.2. Background to these submissions

1.2.1. SSIG Samoa advocate for Justice, Peace, Unity and Development. We work together for the promotion of human rights, in accordance with our Constitution of Samoa 1960 and other respective human rights' principles.

1.2.2. SSIG Samoa's submissions for this Review are based on:

- a) Our experience in promoting rights and freedoms which have been challenged in recent times, by the Government of Samoa (herein referred to as "Samoa", "the State" or "the Government").
- b) The human rights concerns arising, in recent times, by the conduct of the State, some of which are contrary to the previous objectives which the State appeared to be supportive of.
- c) Our motive to raise awareness and teaching on human rights, especially in relation to justice.

1.2.3. SSIG Samoa appreciates this opportunity to comment on Samoa's record of respecting human rights. Our comments will be limited to key areas, given the requirements of these submissions, and that we have publicly expressed our views in recent years about these key issues.

2. Rights of indigenous peoples – customary land rights

2.1. Land Titles Registration Act 2008

- 2.1.1.** There have been numerous reports by experts on land law and customary land rights, outlining the dangers of the **Land Titles Registration Act 2008** ('LTRA 2008').¹ The danger lies in the LTRA 2008 being unconstitutional because its provisions, breach Articles 102, 109 and 14 of Samoa's Constitution. Customary land rights of indigenous communities have been taken away by the State through the shroud of the LTRA 2008 which, even though it does not specifically state that customary land can be subjected to sale-and-purchases similar to that of freehold land, it is the enforcement of the LTRA 2008 which eventuates to alienation of customary land. Such enforcement includes (but is not limited to) through lengthy leases administered by the State, whereby customary landowners cannot access their customary land, because of leases made between matai (village leaders) & other non-villagers, without the villagers' knowledge. Such leases can last for more than a human's lifetime which means through the use of the LTRA 2008, intergenerational injustice has arisen depriving future customary landowners from access to their customary land.
- 2.1.2.** SSIG Samoa commenced legal proceedings against a number of State representatives, in 2018.² This case is still pending. SSIG Samoa have also conducted their Village Education Units (V.E.U) since 2018 whereby they gave public consultations to villages about their rights and obligations under the LTRA 2008, and how it affects their constitutional and customary land rights. SSIG Samoa also protested in December 2018, marching through Apia, raising awareness on how the LTRA 2008 is unconstitutional. SSIG Samoa's latest protests include, in relation to customary land rights, was the peaceful protest outside of the Head-of-state's residence in January 2021 outside the Head-Of-State's residence and the car-convoy held in mid-2020 from Mulifanua to Apia.
- 2.1.3.** From the previous UN UPR for Samoa, it was noted by the country of Cabo Verde (paragraph 95.82) for Samoa as a recommendation to "protect land rights for indigenous communities". Samoa has not been doing this. This is not only reflected in the enactment of the LTRA 2008, but also the passage of three bills in December 2020 by parliament, which also gravely affects customary land rights. Furthermore, Samoa's conduct through the use of one of its entities, 'Samoa Land Corporation', is not owned by the people of Samoa but its shareholding consists of Politicians' interests. This corporation does not act in the interests of customary landowners, as seen in cases such as those residing in Sogi, Samoa (the Tokuma family) who have been living on this land for many generations, only to be forced off their land by the State by having their power turned off, their water-supply cut off and bulldozers ravaging through their land. Such conduct by Samoa through its privatised company 'Samoa Land Corporation', shows how disingenuous Samoa has been in acting in the 'public interest'.

2.2. Recommendations:

- (i) *Samoa to conduct consultations with villages on recommendations to repeal, or alternatively amend, the LTRA 2008.*

¹ For example, from Dr Ilati Ilati, <https://devnet.org.nz/wp-content/uploads/2018/07/latilati.%20Controversial%20Land%20Legislation%20in%20Samoa%20It%27s%20not%20just%20about%20the%20land.pdf>, Fiu Mataese Elisara (O le Siosiomaga Society Incorporated) and Dr Maua Faleauto.

² <https://www.rnz.co.nz/international/pacific-news/364694/samoan-pm-sued-over-land-titles-registration-act>

- (ii) For any legislation similarly worded to the LTRA 2008, Samoa is to abide by its Constitutional obligation under Article 102 and 109, whereby a referendum must be conducted amongst its eligible voters, to decide if any legislation or amendments to the Constitution, contrary to customary land rights whereby there will be alienation of customary land, should be passed.
- (iii) For Samoa to be reminded that it adopted the UN Declaration on the Rights of Indigenous Peoples 2007 whereby under Article 10 “[i]ndigenous peoples shall not be forcibly removed from their lands or territories. No relocation shall take place without the free, prior and informed consent of the indigenous peoples concerned and after agreement on just and fair compensation and, where possible, with the option of return”.

3. The Rule of Law

3.1. Three Land-and-Titles-Court Legislations 2020

3.1.1. Samoa recently passed three controversial legislations in December 2020 being the **Land and Titles Bill 2020**, the **Constitution Amendment Bill 2020** and the **Judicature Bill 2020**. These legislations have been condemned by many legal experts and human rights’ organisations, including the International Bar Association, Samoa Law Society, the Law Council of Australia, the New Zealand Law Society, Amnesty International and others. These legislations go against the rule of law in Samoa, and an example of that is the Executive effectively having control of the Judiciary. These legislations also interfere in cultural values and customs where families and villages are self-determined in how they administer their matai-titles, customary land holdings and village councils.

3.1.2. In addition to the controversies within these legislations, placing the Executive in a powerful position over the Judiciary and Indigenous peoples’ rights, the manner in which these legislations were passed also gained notoriety. The Prime Minister placed these 3 Bills on Parliament’s agenda for its last session of 2020, in order to have them quickly passed before 2021 and before the general election in April 2021. Furthermore, there was no public disclosure from Parliament in its findings, or its submissions received from the public, prior to these Bills being passed. There was a lack of transparency from Samoa to the public on these Bills. Even when the Bills were passed, they were not publicised by Samoa until at least a month after they were passed.

3.2. Recommendation:

- (i) Repeal all three legislations.
- (ii) For any Bills that are similarly worded to those of these three legislations, a referendum must be conducted in accordance with the Constitution.
- (iii) Samoa to be reminded of its obligations under its Constitution and the UN ICCPR.

4. Right to Freedom of Expression or Free Speech

4.1. Political motives

4.1.1. SSIG Samoa is one of many SSIG groups worldwide. There are more Samoans residing outside of Samoa, than in Samoa itself, particularly in countries like New Zealand, Australia and the United States. SSIG Samoa therefore supported by many

internationally-located Samoans. The right to free speech or freedom of expression is an accepted norm for many Samoans who live overseas. However, in Samoa, this particular right has come under attack by the State. The revival of criminalising defamation or libel, in 2017, under the **Crimes Act 2013**, raises major concerns of abuse by the ruling party to suppress free political speech. The 2019 case of **Malele Paulo**, also known as King Faipopo and a member of SSIG Samoa, was the first and only case which has seen an individual charged under the recently-enacted criminal libel provision in the Crimes Act.³ He was convicted and sentenced to seven (7) weeks for comments made on social media. The complainant was the Prime Minister. This is concerning as the Prime Minister and other politicians can use this provision to suppress those who speak out in political opposition, particularly in a country like Samoa where living communally may also mean not expressing yourself freely.

4.1.2. Criminal libel also threatens the right to freedom of the Press. Local media such as the Samoa Observer and others, were vocal in 2017 and 2018 about the real risk to free speech for those working in the media.⁴ The press are a necessity to ensure that the Government undertake good governance practice, as the Press are often seen as the eyes-and-ears of the public.

4.1.3. Samoa's suppression of free speech with its Criminal Libel provision, is also reflected in its extradition case of an Australia Citizen of Samoan heritage, Talalelei Pauga. He, like Malele Paulo, is also a member of SSIG, who is based in Brisbane, Queensland and he has exercised his free speech by protesting against the Prime Minister in 2018. Because of this political protest, there is reason to believe that the Prime Minister has acted in a conflict-of-interest by being the complainant & in ministerial roles which oversee the Attorney-General, the Police and Foreign Affairs. This has therefore raised doubts about the motives underlying the extradition case for **Talalelei Pauga** (an Australian citizen who is Samoan). There are human rights concerns about this case, particularly on the right to free speech against political leaders, which lead to public statements made by a human rights organisation, the Australian Greens Party and members of Samoa's legal profession about their concerns on this case.

4.2. Recommendation:

- (i) *Repeal Criminal Libel / Criminal Defamation under the Crimes Act 2013.*
- (ii) *In criminal cases where the Prime Minister is a complainant and also holds numerous ministerial portfolios in policing, foreign-affairs and the Attorney-General, there should be some independent agency involved in the investigation and prosecution, to avoid conflict-of-interest.*

5. Right to Fair Trial – The Executive interfering with the Judiciary

5.1. Judicial Interference for Political reasons

5.1.1. SSIG Samoa have concerns about the Executive's interference with the Judiciary, which breaches the constitutional right to a fair trial. For one particular case, which involves allegations against members of SSIG Samoa, **Talalelei Pauga, Malele Paulo and Lemai Sione**, whereby the leader of the Executive (the Prime Minister) wrote a letter to the Judiciary intervening in bail decisions for these SSIG Samoa members. This was brought to light by the Samoa Observer, which was also highlighted by Amnesty

³ <https://monitor.civicus.org/updates/2019/09/27/defamation-laws-being-used-silence-criticism-samoa/> ; <https://www.abc.net.au/radio-australia/programs/pacificbeat/freedom-of-expression-concerns-after-blogger-jailed-over-fb/11644814>

⁴ <https://monitor.civicus.org/updates/2019/09/27/defamation-laws-being-used-silence-criticism-samoa/> ; <https://www.rnz.co.nz/international/pacific-news/398119/publishers-of-samoa-observer-guilty-of-defamation>

International and the Greens Party in Australia by a speech made by Senator Janet Rice to Australia's House of the Senate.⁵ In this particular case, there is no independent-body involved in its investigations nor prosecution, which are effectively overseen by the Prime Minister. Therefore there is a real risk that these SSIG Samoa members will not get a fair trial.

- 5.1.2.** Comments have also been made by senior members of the Samoa's Legal Profession, regarding the power the Executive have over the Judiciary. These comments have been made as a result of the three recently-passed Land-and-Titles-Court 2020 legislations.⁶

5.2. Recommendation:

- (i) *Create an independent body which investigates and prosecutes criminal-allegations by the Executive against members of the public, particularly in cases where such members are in political opposition.*
- (ii) *Consideration of engaging members of the Judiciary outside of Samoa, given the control the Executive now have over the Judiciary.*
- (iii) *Repeal the three Land-and-Titles Court 2020 Legislations.*

6. Rights of prisoners, defendants and the detained

6.1. Prisoner's rights

- 6.1.1.** SSIG Samoa raise concerns about the rights of those detained, imprisoned and defendants. In early 2020, a prison-break occurred at Tanumalala Prison where it was reported that prisoners who escaped, did so due to inhabitable conditions at the new Tanumalala prison and mistreatment of the prisoners.⁷ This is understood to have been one of the reasons for the 2020 merge of the Ministry of Police with the Ministry of Prisons and Corrections. This is a concern given that only a few years ago, administration of the Police was separated from administration of Prisons and Corrections, due to one of the reasons being, the unresolved death of a man with mental disabilities, **Hans Dalton**, whilst in Police Custody at the Tafaigata Prison.⁸ Given the history of the administration of the Prisons and Corrections Department, it is also a concern about the case of prisoner, **Sio Agafili**, who was reported in July 2020, to have served his imprisonment sentence five (5) years longer than what it should have been, due to an administrative error by the Prisons and Corrections Department. This prisoner has therefore been held in prison unlawfully by the State and it was reported by his counsel that there were cases of a similar nature, which are also of serious concern to prisoners' human rights.⁹

6.2. Police procedures

- 6.2.1.** Police Procedures in interviewing defendants are also of concern to SSIG Samoa, given the recent case of **Esther Tani**, an 8-month pregnant woman, who was beaten by her partner, fainted, taken to hospital then brought back to the Apia Police Station at 1:30am to give a statement to the Police.¹⁰ Supreme Court Justice Vui Clarence Nelson held that there were serious concerns about how Police interview vulnerable persons. Such concerns were also brought to the attention of Samoa's Police Commissioner

⁵ https://www.aph.gov.au/Parliamentary_Business/Hansard/Hansard_Display?bid=chamber%2Fhansards%2Fdb4b8baa-2cf5-40f1-a3cb-08b7c4af69af%2F&sid=0268&fbclid=IwAR3v2JYbrHFvM2oGtD01Rm4BPwzUJwmpF-EgMQOy7KYqW68SRiCOvrWw1_c

⁶ <https://www.samoaoobserver.ws/category/samoa/76396?fbclid=IwAR0PgzuFCDGPK3QWZkds9wmjuGgYtoHhTMI9J7Lf0q4ZH8kfsLk513R4r0>

⁷ <https://www.samoaoobserver.ws/category/article/53538>

⁸ <https://www.rnz.co.nz/news/national/404694/family-of-nzer-who-died-in-samoan-jail-want-to-meet-with-samoa-s-attorney-general>

⁹ <https://www.rnz.co.nz/international/pacific-news/420724/samoa-man-jailed-for-5-years-too-long>

¹⁰ <https://www.loopsamoa.com/samoa-news/samoa%e2%80%99s-justice-vui-raises-concerns-about-police-interview-procedures-96337>

who referred to Police Procedures that are in place and if this fails, use ‘common sense’.¹¹ There have also been cases where police have interviewed persons of interests, whereby a suspect would be detained in a room or a cell under Police Custody, with a young child also being detained. Cases referred to are the 2014 case where a 3 year old boy was locked in a cell with his father (which lead to civil proceedings against Samoa where a settlement was understood to have been reached in 2018)¹² and a case in January 2017 where a man claimed to have been held in the Apia Police Station with his 3 year old daughter as reported by the Samoa Observer.¹³

6.2.2. Recommendation:

- (i) A review of Samoa as to what progress has been made since the Ministry of Police and Ministry of Prisons and Corrections were merged in 2020.
- (ii) A review of Police Procedures in interviewing suspects or persons of interest, particularly those who are vulnerable and may have disabilities. To what extent are these Procedures being monitored and complied with by the Police.
- (iii) An assessment of Samoa’s compliance with the Nelson Mandela Rules and a review of what action has been taken to ensure administrative errors are avoided so serious breaches of human rights of those detained do not arise.
- (iv) To establish Legal Services available 24 hours, to those detained, held in custody or in prison, to ensure rights of those detained are being fulfilled by the State.

7. Right to Health and Rights of the child

7.1. Measles Epidemic

7.1.1. The measles epidemic in 2019 led to at least 100 deaths as recently reported by an NGO, ‘Samoa Umbrella of Non-Government Organisations’ (SUNGO) as 17 deaths had been unaccounted for in the official 83 count.¹⁴ The State have recently been reported as acting negligently which led to one of Samoa’s worst ever tragedies.¹⁵ Samoa have adopted the UN Convention on the Rights of the Child. Samoa would also be aware of the ICESCR and how, under Article 12, the right to health is a fundamental human right whereby every individual is entitled to the “enjoyment of the highest attainable standard of physical and mental health”. Given the recent reports on Samoa’s negligence in not taking swift and diligent action with regards to the Measles epidemic, and given there has been a refusal by the Prime Minister to not order a Commission of Inquiry into this epidemic as it is a “waste of time and money”,¹⁶ Samoa appear to have ignored its obligation to ensure the right to health and the rights of the child, have been fulfilled.

7.2. Recommendation:

- (i) Order a Commission of Inquiry into the Measles Epidemic
- (ii) Review of what measures have and will be taken to avoid this.

¹¹ Ibid.

¹² <https://www.rnz.co.nz/news/pacific/256363/samoa-police-inquiry-into-jailing-of-a-3-year-old>

¹³ <https://www.samoaoobserver.ws/category/samoa/223>

¹⁴ <https://www.samoaoobserver.ws/category/editorial/80417>

¹⁵ <https://www.rnz.co.nz/international/pacific-news/436535/samoa-govt-accused-of-negligence-ahead-of-lethal-2019-measles-outbreak>

¹⁶ <https://monitor.civicus.org/updates/2020/01/31/demands-accountability-and-transparency-over-measles-outbreak-samoa/> and <https://www.youtube.com/watch?v=sFgCWXiMWxk> “The Prime Minister of Samoa believes an inquiry into the measles epidemic that has to date claimed the lives of 83 people mainly young children all under the age of five and infected over 5,600 people is a waste of time and a waste of governments money”.