



**International Convention for
the Protection of All Persons
from Enforced Disappearance**

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Committee on Enforced Disappearances

Thirtieth session

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**Consideration of reports of States Parties
under article 29 (1) of the Convention**

**Replies of Samoa to the list of issues in relation to
its report submitted under article 29 (1) of the
Convention***

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* The present document is being issued without formal editing.



1. The Committee considered Samoa's initial report on the measures taken to give effect to the Convention and the progress made towards the realization of the rights recognized in it. It then submitted a list of issues or additional information to be provided. The responses in this document seek to provide information in respect of matters raised by the Committee.

I. General Information

Reply to paragraph 1 of the List of Issues (CED/C/WSM/Q/1)

2. Samoa is committed to the protection and the promotion of human rights and the importance of preventing and eradicating enforced disappearances. Samoa has never had a case of enforced disappearance and will continue to ensure the status quo remains.

3. Samoa will consider an appropriate time and circumstances to prepare the procedures for making the declarations of the committee's competence as defined in the articles 31 and 32 of the convention.

Reply to paragraph 2

4. The Komesina o Sulufaiga (Ombudsman) Act 1988 has been repealed and replaced by the Ombudsman (Komesina o Sulufaiga) Act 2013. The new Act expands the mandate of the Office to include: (1) ensuring the application of good governance by public agencies; (2) the promotion and protection of human rights (thus becoming the National Human Rights Institution); and (3) the investigation of complaints against the police and other prescribed forces. In 2015, the Constitution was amended to provide for the appointment and functions of the Ombudsman.

5. There have been no complaints received by the Office of the Ombudsman concerning rights and obligations covered under the Convention.

6. The Government of Samoa is aware that NHRI Submission to the CED Committee in 2023 referenced two cases claiming to be possibly related to enforced disappearances. Further clarification on these cases is provided in the response to paragraph 13 of the List of Issues below.

Reply to paragraph 3

7. There is no specific legislation in place to domesticate the Convention in Samoa. However, as outlined in Samoa's initial report, the existing legal framework identifies the legislation and legal basis through which the obligations under the Convention are recognised. Accordingly, the Convention may be referenced in court even without a specific CED legislation. For example, there has been a case in which provisions of the Convention on the Rights of the Children referenced in court.

8. To date, there have been no reports or court cases related to enforced disappearance in which the provisions of the convention would have applied.

Reply to paragraph 4

9. Samoa does not have civil society organisations specifically working on the issue of enforced disappearance. The drafting process of the report was spearheaded by the Ministry of Foreign Affairs and Trade under the guidance of National Mechanism for the Implementation, Reporting and Follow-up (NMIRF) Taskforce. The NMIRF Taskforce comprises of representatives from the Office of the Attorney General, Ministry of Police, Prisons and Correction Services, Ministry of Justice, Courts and Administration, Ministry of the Prime Minister and Cabinet, Ministry of Health, Ministry of Education and Culture, Ministry of Finance, Ministry of Commerce, Industry and Labour, Ministry of Women, Community and Social Development, Public Service Commission, Samoa Law Reform

Commission, Samoa Bureau of Statistics, Legislative Assembly, the Ombudsman's Office and relevant civil society organisation as an observer. The NMIRF Taskforce serves as the main body responsible for human rights issues, including the implementation, reporting and follow-up of human rights conventions to which Samoa is a party to.

II. Definition and Criminalization of Enforced Disappearance (arts. 1–7)

Reply to paragraph 5

10. Article 105 of the Constitution provides that a declaration or proclamation of an emergency may be issued when the nation (Samoa) is faced with serious threats that can undermine and impact the security and safety of its citizens. This provision allows for the temporary suspension of certain fundamental rights such as the Right to Personal Liberty (article 6) and Rights Regarding Freedom of Speech, Assembly, Association, Movement, and Residence (Article 13) amongst others, during a state emergency, except where specific rights are expressly mentioned in the order of the declaration / proclamation of an emergency.

11. Article 108 of the Constitution establishes an advisory board which consists of a Chairman appointed by the Head of State, a number of Supreme Court Judges, and two additional members appointed to act on behalf of the Head of State. The role of the advisory board is to consider recommendations and issues relating to the detention of individuals who are alleged to have committed crime, including the facts underlying such allegations. Art.108 therefore does not provide any basis for invoking exceptional circumstances to justify enforced disappearance.

Reply to paragraph 6

12. The laws generally referenced in paragraph 9-10 of the Report, together with other domestic legislation that give effect to treaties and protocols to which Samoa is a party to, govern the implementation and enforcement of international obligations under the Convention. This legislative framework provides national recognition of the principles contained in international conventions and assist the Judiciary in interpreting and applying those principles/concepts in cases before them.

13. The enforced disappearance is criminalised in Samoa through the International Criminal Court Act of 2007. The ICC Act provides that 'crimes against humanity' is an offence liable upon conviction after trial on indictment, to be punishable by a maximum period of life imprisonment:

- A crime against humanity includes the act of 'enforced disappearance of persons' (refer to article 7(1) of the Rome Statute of the International Criminal Court (Statute), listed as Schedule 1 to the ICC Act);
- The definition of enforced disappearance in article 7(2) of the Statute incorporated into Samoa's ICC Act is consistent with Article 2 of the Convention;
- Crime against humanity is defined as "an act specified in article 7 of the Statute and includes any other act which, at the time and in the place of its commission, constitutes a crime against humanity according to customary international law or conventional international law or by virtue of it being criminal according to the general principles of law recognized by the community of nations, whether or not it constitutes a contravention of the law in force at the time and in the place of its commission"

Reply to paragraph 7

14. There have been no recorded cases of enforced disappearance.

Reply to paragraph 8

15. There have been no complaints or cases of enforced disappearance.

Reply to paragraph 9

16. There were no reported cases.

Reply to paragraph 10

17. All enforced disappearances are classified as crimes against humanity within Samoa's legal framework. Any alleged enforced disappearance case will be investigated in accordance with the procedure provided for under the Criminal Procedure Act 2016. Prosecution can only be carried out with the consent of the Attorney General (AG). A person who has been arrested can be released on bail without the consent of the AG.

III. Judicial Procedure and Cooperation in Criminal Matters (arts. 8–15)

Reply to paragraph 11

18. The ICC Act 2007, the Crimes Procedures Act 2016 and Crimes Act 2013 do not contain provisions regarding statute of limitation for alleged cases of disappearance that are not classified as crimes against humanity.

19. Section 15 of the ICC Act (Limitations on bringing matters to court), provides that crimes within the jurisdiction of the ICC shall not be subject to any law imposing limitations on the initiation of court proceedings. As enforced disappearance is classified as a crime against humanity, it falls within the scope of the ICC Act.

Reply to paragraph 12

20. Article 36 of the Diplomatic Privileges and Immunities Act 1978 provides the guarantees for the right of access to consular assistance of any person in custody. Samoa ratified the Vienna Convention on Consular Relations in 1987 and upholds its obligations under this convention in relation to the access of other nationals within State Parties, to consular assistance when detained.

Reply to paragraph 13

21. Samoa understands the questions to relate to a missing person case reported to MPPCS in July 2019, which was widely publicised in the media. The missing person was identified as Mr Semi Leau. An investigation was opened by MPPCS, however, there was insufficient evidence to establish any foul play. The case remains open, and Mr Leau has not yet found.

22. With respect to the disappearance of Mr Chong Nee in 2020, please note that this is an escaped prisoner situation. He remains wanted for the offences he committed. Despite extensive police investigations and follow-up on numerous public leads, he has not been located.

23. Neither of these cases is classified as an enforced disappearance.

Reply to paragraph 14

24. The Special Investigations Unit (SIU) established within the Office of the Ombudsman under the Ombudsman Act 2013, has the authority to investigate misconduct,

including allegations enforced disappearance involving the Samoa Police Service and other agencies exercising coercive powers of the state.

25. The Samoa Police Service Act 2009, also provides for a Professional Standards Unit within the police force to investigate complaints of neglect of duty or alleged misconduct, including allegations of involvement in enforced disappearance. Any law enforcement officer may be suspended in accordance with Article 52 of the Samoa Police Service Act 2009 while investigations are undertaken in relation to the alleged offence.

Reply to paragraph 15

26. Samoa has a legal framework in place to investigate, prosecute or respond to extradition requests in relation to enforced disappearance offences. Any request for extradition will be actioned in accordance with the Extradition Act 1974.

27. There have been no extradition agreements concluded with other State Parties since the entry into force of this Convention in 2012.

Reply to paragraph 16

28. The existing Mutual Assistance in Criminal Matters Act 2007 facilitates the granting and obtaining of international assistance in criminal matters, this includes assistance in locating and identifying a person(s) or obtaining evidence in reference to para 55 of the report. There have been no cases related to enforced disappearances which required mutual legal assistance.

29. In accordance with Samoan law, assistance is subjective based on facts and people involved in the case. All assistance may be prohibited by Samoa Law or refused if it is against the interests of justice.

IV. Measures to Prevent Enforced Disappearances (arts. 16–23)

Reply to paragraph 17

30. All Procedures, Acts & Provisions stated in para 58 - 64 of the report applies to all risks, that includes the risk of enforced disappearance. The relevant authorities with responsibilities under the applicable Act will follow due process as highlighted in the report, when undertaking procedures to assess the risks that a person requested to be extradited faces/will face.

31. In this context, the following provisions apply from the Extradition Act 1974:

“6. General restrictions on extradition - (1) A person shall not be extradited under this Act to an extradition country or committed to or kept in custody for the purposes of such extradition if it appears to the Minister, or to the Court of committal or the Supreme Court on an application for habeas corpus or for review of the order of committal:

(a) That the offence of which that person is accused or was convicted is an offence of a political character;

(aa) That the offence of which the person is accused or was convicted is an offence under the military law, but not under the ordinary criminal law, of the requesting country;

(b) That the request for extradition (though purporting to be made on account of the extradition offence) is in fact made for the purpose of prosecuting or punishing him on account of his race, religion, ethnic identity, nationality or political opinions; or

(c) That he might, if extradited, be prejudiced at his trial or punished, detained or restricted in his personal liberty by reason of his race, religion, ethnic identity, nationality or political opinions.”

Reply to paragraph 18

32. Article 60 of the Prisons and Corrections Act indicates regulations and practices which recognise the rights of prisoners and the services they are entitled to. These include:

- (i) visits from friends, relatives and other persons;
- (ii) communications by post, or other means;
- (iii) procedures for complaint and representation to prison authorities, the Ombudsman or any other agency with responsibilities for the investigation and enforcement of human rights;
- (iv) exercise and recreation

33. All persons deprived of liberty are advised of their entitlements, and information is made available to their families as well. During COVID-19, Samoa was under the State of Emergency and relevant restrictions were in place and revised as the situation changes.

34. There have been no formal complaints or allegations regarding the safeguards have been recorded.

Reply to paragraph 19

35. Any person lawfully convicted as their details recorded by the Courts, Prisons, and Police. Details recorded (personal details, charge, date of conviction, and length of sentence).

36. There were no reported cases regarding unlawful deprivation of liberty.

Reply to paragraph 20

37. Paragraphs 71 and 72 of the state party report outline the legal guarantees for access to information by any person with a legitimate interest in accordance with Article 18 of the Convention.

38. In the context of COVID-19, Samoa operated under the declaration of the state of emergency of which certain restrictions were put in place for the securing public safety. Access to information during COVID-19 was possible through telecommunication as movements of people were restricted.

39. With respect to Article 22 of the Convention, the legal framework provided in paragraphs 80-85 already guarantees the rights for people deprived of liberty on processes available to them in accordance with the laws of the state. The protections provided by these laws ensure that the conduct prohibited under Article 22 does not occur.

Reply to paragraph 21

40. The collecting of forensic evidence is not limited to criminal investigations. As provided in section 21 of the Police Powers Act 2007, forensic samples may be authorised when there are reasonable grounds to believe that a serious offence has been committed.

Reply to paragraph 22

41. The Ombudsman Office provides annual human rights training for new officers in law enforcement agencies including police and prisons services. These trainings focus on

international human rights standards and Samoa's obligations covering all Conventions to which Samoa is a party, including the CED.

42. Police officers have also attended a number of UNCAT trainings overseas. However, there are no records of trainings conducted by Government or by NHRI specific to Enforced Disappearance. The Government, together with its partners remains committed to provide trainings on Enforced Disappearance and all other human rights treaties, as resources permit.

43. The NMIRF taskforce receives notes and briefings on CED and other human rights treaties during their meetings/consultations.

V. Measures to Protect and Ensure the Rights of Victims of Enforced Disappearance (art. 24)

Reply to paragraph 23

44. Samoa is committed to the protection and the promotion of Human Rights and the importance of preventing enforced disappearances. Samoa has never had a case of enforced disappearance and will continue to ensure the status quo remains. The current legal framework provides basis for the implementation of Article 24.

Reply to paragraph 24

45. Samoa's current legal framework including the Samoa ICC Act 2007, Article 75 provides a general provision for reparations to all victims. It states that "The Court shall establish principles relating to reparations to, or in respect of, victims, including restitution, compensation and rehabilitation."

46. No information is available on principles relating to reparations to, or in respect of, victims, including restitution, compensation and rehabilitation as there were no cases of enforced disappearance.

VI. Measures to Protect Children Against Enforced Disappearance (art. 25)

Reply to paragraph 25

47. While there is no comprehensive legislation on the protection of children in the context of the convention for the protection of all persons from enforced disappearance, the Crimes Act 2013, the Infant Ordinance 1961 and the ICC Act 2007, the Criminal Procedures Act 2016 will guide the process of investigation and prosecution of conduct described under Article 25 of the Convention

48. Furthermore, there have been no complaints or cases brought to the authorities in relation to enforced disappearance and/or as described in Article 25 (1) (a) of the Convention since entry into force of the Convention for Samoa and prior.

49. The Government remains committed to strengthening legislation that protects children from all forces of harmful activities.

Reply to paragraph 26

50. While Samoa does not have comprehensive legislation specifically addressing the protection of children in the context of the Convention for the protection of all Persons from Enforced Disappearance, Samoa has in place the Infants Ordinance 1961 which recognizes the universal principle of ensuring the protection of the welfare (best interest) of a child as the paramount consideration of the Court, when deciding any matters brought before it. In

addition to this specific legislation, there are other enactments in Samoa's legal framework that also further provides for the protection and safety of children.

51. The Samoa Airways airline has a policy in place for unaccompanied minors aged of 2 to 11 years old. The airline requires the completion of an Unaccompanied Form (UM) to record relevant information. Furthermore, all children under the age of 18 are required to be accompanied by an able passenger 18 years and above. These are some of the policies/processes in place by one of the airlines operating in Samoa applicable to unaccompanied travelling minors to ensure safety and proper supervision of unaccompanied minors.

Reply to paragraph 27

52. While Samoa does not have comprehensive legislation specifically addressing the protection of children in the context of the Convention for the protection of all Persons from Enforced Disappearance, the Infants Ordinance 1961 recognizes the universal principle that the welfare (best interest) of a child is the paramount consideration of the Court in any matter brought before it. In addition to this specific legislation, other laws within Samoa's legal framework further provide for the protection and safety of children.

53. The Crimes Act 2013 specifies charges for the kidnapping of children (under 16):

- Person may be imprisoned for up to 10 years if they take, entice away or detain a child from the parent or guardian who has lawful care of charge over the child. This includes the person who receives the kidnapped child, knowing the child has been taken away, even if the child consents (section 131);
- The Act further states that using, altering, concealing or destroying documents with the intent to deceive, will be liable to imprisonment for up to 7 years. This can be applied to falsifying adoption papers or concealing of children's' true identities (part 17).

54. Samoa is a member of the Convention on the Rights of the Child and is deeply committed to upholding its obligations and principles.
