



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

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**Committee on Enforced Disappearances**

**Report submitted by Samoa under article 29 (1) of  
the Convention, due in 2014\***

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\* The present document is being issued without formal editing.



**List of abbreviations**

The Convention	International Convention for the Protection of All Persons from Enforced Disappearance
MFAT	Ministry of Foreign Affairs and Trade
OAG	Office of the Attorney General
AG	Attorney General
MPPCS	Ministry of Police and Prisons and Correctional Services
MJCA	Ministry of Justice, Courts and Administration
SLRC	Samoa Law Reform Commission
NMIRF	National Mechanism for Implementation, Reporting and Follow-Up
ICC	International Criminal Court
MPMC	Ministry of the Prime Minister and Cabinet
MWCSD	Ministry of Women, Community and Social Development
NHRI	Office of the Ombudsman/National Human Rights Institution
SVSG	Samoa Victims and Support Group
SUNGO	Samoa Umbrella for Non-Governmental Organisations
JAWS	Journalists Association of Western Samoa

## Introduction

1. Situated in the middle of the Pacific Ocean, Samoa is a small island developing state with a population of about 200,000. Since gaining its independence from the New Zealand administration in 1962, Samoa has adopted the Westminster model of parliamentary democracy.
2. The Constitution of the Independent State of Samoa 1960 is the supreme law of the land. Part II of the Constitution clearly sets out the fundamental rights to which every individual is entitled and the responsibility of the Government to ensure that these rights are promoted and protected.
3. The Independent State of Samoa deposited its instrument of ratification of the Convention for the Protection of All Persons from Enforced Disappearance (hereinafter referred to as the “Convention”) with the Secretary-General of the United Nations on 27 November 2012, without reservations.
4. By ratifying the Convention, Samoa reaffirmed to the international community its commitment to the protection and promotion of human rights and ensured that (i) no one shall be subjected to enforced disappearance and (ii) no exceptional circumstances whatsoever, whether a state of war or threat of war, internal political instability, or other public emergency, may be invoked as justification for enforced disappearances.
5. This first report covers the period from December 2012 to December 2022. Samoa’s current report under the treaty body reporting system consists of two parts, the Common Core Document, and the treaty specific document.
6. In accordance with article 29 of the Convention, Samoa hereby submits to the Committee a report on the measures taken to give effect to its obligations under the Convention. The present document was written in accordance with the guidelines on the form and content of reports to be submitted by States parties to the Convention.
7. When Samoa ratified the Convention, there was no specific legislation in place to ensure compliance with the Convention’s obligations within the national legislation, nor were there any reported cases of enforced disappearance. However, there is an existing legal framework in place that can be used to address the issue.

## I. Preparation of the report

8. The Ministry of Foreign Affairs and Trade (MFAT) has prepared this report in cooperation with the Office of the Attorney General (OAG), Ministry of Police and Prisons and Correctional Services (MPPCS), Ministry of Justice, Courts and Administration (MJCA) and Samoa Law Reform Commission (SLRC). The report has been submitted to the Samoa National Mechanism for the Implementation, Reporting and Follow-up (NMIRF) Taskforce, comprised of government ministries and civil society.

## II. General legal framework prohibiting enforced disappearance in Samoa

9. The following are brief references to provisions in Samoa’s legal framework that are used to implement or are related obligations under the Convention for the Protection of all Persons from enforced disappearance:

(a) The Constitution of the Independent State of Samoa guarantees the fundamental right to life and personal liberty of every person in Samoa:

- Article 5 of the Constitution provides for a person’s right to life, according to which no person shall be intentionally deprived of his or her life unless convicted by a Court of law of an offence for which law provides a penalty is provided by Act;

- Moreover, in addition, Article 6 of the Constitution provides for the right to liberty, according to which no person shall be deprived of his or her personal liberty except in accordance with law. Government of Samoa firmly believes that this contributes to the non-derogability of the prohibition of enforced disappearance;
- (b) The International Criminal Court Act of 2007 (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”;
  - The ICC Act 2007 in section 10 further excludes the defence of obedience to a superior order (or superior command responsibility) for crimes against humanity, which includes enforced disappearance;
  - When interpreting and applying Articles 6: Genocide; Article 7: Crimes Against Humanity, and Article 8: War Crimes of the Rome Statute, the Court shall take into account any elements of Crimes adopted pursuant to article 9 of the Statute (defences);
- (c) The Crimes Act 2013 contains relevant provisions which are outlined below:
- Section 130 (Kidnapping)): provides that a person who unlawfully carries off, takes or detains any other person without that other person’s freely and voluntarily given consent, or with consent obtained by fraud or duress, with intent to cause that other person to be confined, or imprisoned; or to hold that other person for ransom or to service, is liable to imprisonment for a term not exceeding 10 years;
  - Section 131 (Abduction of a child under 16) states that a person who unlawfully takes or entices away any child under 16 years old, with intent to deprive any parent or guardian or other person having the lawful care of charge of any child under the age of 16 years of the possession of that child, or with intent to have sexual connection with any child under the age of 16 years old, unlawfully takes or entices away or detains the child; or receives the child, knowing that the child has been so taken or enticed away or detained is liable to imprisonment for a term not exceeding 10 years;
- (d) The Criminal Procedures Act 2016 contains the following provisions regarding arrest:
- (i) Section 29 (Arrest without warrant): sets forth the circumstances under which a private person and, or a constable, or a person the constable calls for assistance, can arrest a person and take into custody without a warrant;
  - (ii) Section 30 (Power to enter premises without warrant to arrest offender or prevent offence) – sets forth the circumstances under which a constable may enter premises without a warrant to arrest the offender. The provision also provides that the person arrested without warrant must be brought before a Court or remanding officer, as soon as is reasonably possible.

10. Samoa is a party to the following international human rights treaties and protocols dealing with the prohibition of enforced disappearances:

- (a) Convention against Torture and Other Cruel inhuman or Degrading Treatment or Punishment – acceded on 28 March 2019;
- (b) International Covenant on Civil and Political Rights – acceded on 15 Feb 2008;
- (c) Convention on the Elimination of All Forms of Discrimination against Women – acceded 25 September 1992;
- (d) Convention on the Rights of Child – signed 30 Sept 1990, ratified 29 Nov 1994;
- (e) Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict – acceded 17 May 2016;
- (f) Optional Protocol to the Convention on the Rights of the Child on the safe of children child prostitution and child pornography – acceded 29 April 2016;
- (g) Convention on the Rights of Persons with Disabilities – signed 24 Sept 2014, ratified 2 Dec 2016.

11. The laws generally referenced above together with all other domestic legislation recognizing laws governing the treaties and protocols listed, govern the implementation and enforcement of international obligations under the Convention. It is this legislative framework that gives national recognition to principles of international conventions and aid the Judicial branch of Government in their decisions in interpreting and applying the principles/concepts under these international conventions to which Samoa is a party. We refer to section 27 of the Common Core Document which refers to the three branches (i) Legislative Branch (ii) Executive Branch and (iii) Judicial Branch. This separation of powers ensures that the laws are respected.

12. All the stakeholder agencies of Samoa are competent in the protection and promotion of human rights. However, the primary authorities that protect and promote human rights are namely the following agencies: the Ministry of Police Prisons and Correctional Services (MPPCS), Ministry of the Prime Minister and Cabinet (MPMC), Ministry of Women, Community and Social Development (MWCSD), Ministry of Justice and Courts Administration (MJCA), Ministry of Foreign Affairs and Trade (MFAT), Office of the Attorney General (OAG). The functions of these agencies are listed in the Common Core Document.

13. There is a good working relationship between the government and the Office of the Ombudsman/National Human Rights Institution (NHRI), the Samoa Victims and Support Group (SVSG), and Samoa Umbrella for Non-Governmental Organisations (SUNGO). The Ombudsman (Komesina o Sulufaiga) Act 2013 has the objectives which are: (a) to promote transparency, accountability and integrity in the administration and decision making of Ministries and organisations; and (b) to promote and protect the dignity of humankind enshrined in the Constitution, international human rights law, as the foundation of a fair, just and peaceful society.

### **III. Article by Article presentation of the implementation of the Convention**

14. The implementation of the Convention in national law, article by article, is described below.

#### **Article 1**

15. The Constitution of Samoa Part II Fundamental Rights, protects the fundamental right to life and personal liberty. As noted above, the Constitution is the supreme law of Samoa and takes precedence over all national laws (principal, subsidiary, and others). This

legislative measure has been a sufficient guarantee of the non-derogability of the prohibition of enforced disappearance to date. More specific legislative provisions further confirm this position, as enforced disappearances are recognised as a crime against humanity under the national law.

## **Article 2**

16. The definition of “enforced disappearance” is explicitly defined in the International Criminal Court Act of 2007 under Part II, Section 6 (2) referring to and is in conformity with the Article 7(1)(i) of the Rome Statute. Section 6(2) states that:

“‘enforced disappearance of persons’ means the arrest, detention or abduction of persons by, or with the authorisation, support or acquiescence of, a State or a political organization, followed by a refusal to acknowledge that deprivation of freedom or to give information on the fate or whereabouts of those persons, with the intention of removing them from the protection of the law for a prolonged period of time”.

17. In addition, Part II of the Constitution sets out fundamental (constitutional) rights for all individuals under Samoa’s jurisdiction. These include the right to life, personal liberty, freedom from inhumane treatment, freedom from forced labour, right to a fair trial, rights concerning criminal law, freedom of religion, rights concerning religious instruction, freedom of speech, assembly, association, movement and residence, a person’s rights regarding property and freedom from discriminatory legislation.

## **Article 3**

18. The duty to investigate may be exercised within the framework of the existing mechanisms for the protection of fundamental constitutional rights. Thus, in Article 4, the Constitution provides remedies for the enforcement of rights by any person regardless of whether the offender is a state or non-state actor.

19. Notably, enforced disappearances are punishable as crimes against humanity under the International Criminal Court Act of 2007. The procedure and the conducting of investigation and prosecutions are provided for under the Criminal Procedure Act 2016. In section 16 of the ICC Act provides that prosecutions for offences under sections 5 (Genocide), 6 (Crimes against humanity) or 7 (War crimes) require the consent of the Attorney General for any proceedings to take place.

## **Article 4**

20. Enforced disappearance and torture are defined in Section 6 subsection 3 of ICC Act 2007 and are considered offences which carry a maximum penalty of life imprisonment. Penalties for other similar offences are set out in the Crimes Act 2013.

21. The Supreme Court issues arrest warrants based on compelling evidence. The law provides for the right to a prompt judicial decision on the legality of detention, and authorities generally respect this right. Authorities inform detainees of the charges against them, within a few hours or release them. The government allow detainees prompt access to a lawyer of their choice. For indigent detainees, the government provides a lawyer upon request. The government does not hold suspects incommunicado or under house arrest.

## **Article 5**

22. See paragraphs 13, 15, 18 and 19.

## Article 6

23. Part II, Section 11 of the ICC Act 2007 governs the responsibility of military commanders and other superiors. A military commander, or a person acting on his/her behalf, and superiors are responsible for offences that include crimes against humanity such as enforced disappearances. They are responsible for offences committed by their subordinates as a result of their failure to exercise proper control over them, if they knew and disregarded information that clearly indicated that the subordinates were or are about to commit the offence, or if they failed to take all necessary and reasonable steps within their power to refer the matter to the competent authorities for investigation or prosecution.

24. The penalty for persons involved in the crime of “enforced disappearance” is found in Section 6(3) of the ICC Act of 2007, which provides that a person convicted of this offence is liable to be sentenced to a maximum term of life imprisonment.

25. Notwithstanding Section 9, which provides that a person charged with an offence under Section 5 (Genocide), Section 6 (Crimes against humanity), Section 7 (War crimes), and Section 7A (Crimes of aggression) may invoke on a defence provided in Samoan or international law. Furthermore, Section 10 of the Act provides that obedience to a superior order is not a defence to these offences.

26. Section 11 also provides that a superior is criminally liable if he/she has failed to exercise control over his/her subordinates. They shall be treated as having aided, abetted, counselled, or induced the commission of the offence to which this refers.

## Article 7

27. See paragraph 22.

28. The Sentencing Act 2016 section 5, sets out the purposes for which defendants may be sentenced or otherwise dealt with by the courts, to promote further those purposes, to aid in the public’s understanding of sentencing practices, by setting out principles and guidelines to be applied by the courts in sentencing or otherwise dealing with defendants, to provide a sufficient range of sentences and other means of dealing with defendants and to safeguard for the interests of victims of crime and for related purposes. Section 7 (Aggravating and mitigation factors) provides a list of aggravating and mitigating factors that the court must take into account in sentencing or otherwise dealing with a defendant.

## Article 8

29. Section 15 of the ICC Act 2007 provides that the crimes within the jurisdiction of the ICC (International Criminal Court) shall not be subject to any law relating to limitations on the initiation of judicial proceedings in a court of law. This is an expressed provision in the law of Samoa that crimes under the jurisdiction of the ICC are not subject to a limitation period in terms of when a matter may be initiated. This allows open opportunity for such matters to be brought to a court of law.

30. Subsequently Schedule 1 Article 29 of the ICC Act 2007, Non-Applicability of statute of limitations reaffirms the inapplicability of the statute of limitations to crimes within the jurisdiction of the court. This in turn should allow victims to seek redress.

## Article 9

31. Section 13 (Jurisdiction to try offences under sections 5, 6 7 and 7A) of the ICC Act 2007 allows the institution of proceedings for enforced disappearance (and other offences under the listed sections) to be instituted in Samoa. This provides that Samoa has jurisdiction is to be exercised if:

- (a) The offence of enforced disappearance is prosecution, committed in Samoa;
- (b) The person is a citizen or permanent resident of Samoa;

(c) The person has committed the offence against a citizen or permanent resident of Samoa; or

(d) The person is, after the commission of the offence, present in Samoa.

32. To date, there have been no cases of enforced disappearance in Samoa. However, with respect to requests for mutual assistance from other States, Samoa has a Mutual Assistance in Criminal Matters Act 2007, which provides for the facilitation and obtaining of international assistance in criminal matters. The Act defines the term ‘criminal investigation’ and although it is a general definition, it can be interpreted and applied to matters relating to the offence of enforced disappearance.

## **Article 10**

33. Section 16 of the ICC Act 2007 (Attorney General consent required for prosecutions under sections 5, 6, 7 and 7A) under subsection (2) is an exemption that where an offence is committed under the listed sections, the suspected person may be arrested / remanded in custody even though AG consent for proceedings to be instituted against a person has not been obtained (but no further steps shall be taken in proceedings until the consent is obtained).

34. Section 8(1) (c) of the Crimes Act 2013 states that extraterritorial jurisdiction applies to a person who ‘has been found in Samoa and has not been extradited’, even if the acts underlying the offence were committed entirely outside Samoa. Proceedings may be instituted for the person charged.

35. In addition, Section 25 of the ICC Act 2007, reinforces the above by stating that even if an offence is alleged to have been committed by a person outside Samoa, proceedings may be instituted against that person in Samoa in the appropriate courts.

36. There is no prohibition under the legislation for foreign detainees to have access to consular services.

## **Article 11**

37. See paragraphs 29–33.

38. For international crimes such as ‘crimes against humanity’, in this case, enforced disappearance, prosecution can only be carried out with the consent of the Attorney General or a person acting on behalf of the Attorney General (AG), as stipulated in Section 16 of the ICC Act 2007. However, a person may be arrested, or a warrant may be issued and executed, and they may be remanded in custody or released on bail, even if the consent of the AG has not been obtained, but no further steps may be taken in the proceedings until the consent of the AG has been obtained.

39. The Criminal Procedure Act 2016 contains standard provisions for due process when a person has been arrested with or without a warrant.

40. The Constitution of Samoa affords every person charged in Samoa (including those charged with crimes against humanity, the right to a fair trial under Article 9 of the Constitution. There are no reported cases of enforced disappearance in Samoa, therefore there is no report on the practical implementation of the measures set out in the legislative framework.

## **Article 12**

41. The complainant has the right to report the facts, and investigations must be conducted independently and expeditiously. The Ministry of Police, Prisons and Correctional Services describes the procedures for reporting a crime, which include (i) reporting the crime to the nearest police station; (ii) filing out a criminal report; (iii) making an official statement and (iv) initiating an investigation by the police.



42. Samoa has a Professional Standards Unit established under Section 68 of the Police Service Act 2009, as part of the Police Service to investigate complaints of negligence, alleged misconduct and allegations of corruption by police officers. The Office of the Ombudsman is responsible for the periodic review of the Professional Standards Unit.

43. Section 41 of the Ombudsman (Komesina o Sulufaiga) Act 2013 establishes and sets out the functions of a special investigative unit to receive, investigate and determine complaints against a police officer, prison officer or an officer of another prescribed disciplinary authority. In addition, in subsections 3(b)(ii) and 3(b)(iii), the unit shall conduct an investigation if the Ombudsman has reason to believe that the investigation has been unreasonable, delayed or the matter has not been adequately investigated.

44. If there are reasonable grounds, an investigation must be conducted – even if there is no complaint. The State should ensure that the authorities have necessary powers and resources to conduct investigations and that they have access, if necessary, with the prior authorization of the judicial authority, which should decide promptly. The State should not impede investigations.

### Article 13

45. The Extradition Act of 1974 governs the extradition of fugitive offenders. Section 4 provides that a person found in Samoa who is accused of an extradition offence in an extradition country or who is alleged to be unlawfully at large after conviction of an extradition offence in an extradition country may be arrested and returned to the extradition country concerned in accordance with the Act.

46. An “extradition country” is defined in section 2 of the Extradition Act 1974 as a Commonwealth country (designated by an Order under section 3, and if any, together with the dependencies, or a foreign country with which an extradition treaty is in force. Therefore, this Act applies only between Samoa and a Commonwealth country designated by an Order under section 3, or a foreign country with which an extradition treaty is in force.

47. Section 6(1) of the Act provides for general restrictions on extradition under which a person may not be extradited under this Act to an extraditing country if it appears to the Minister or to the court (Court of Committal or Supreme Court – on an application for habeas corpus to review the committal order):

(a) That the offence with which the person is charged or for which the person has been convicted is an offence of a political character;

(b) That the request for extradition was made for the purpose of prosecuting or punishing the person because of his or her race, religion, ethnic identity, nationality, or political opinion; or

(c) That the person, if extradited, could be prejudiced at trial or punished, detained or restricted in his or her personal liberty by reason of his or her race, religion, ethnic identity, nationality or political opinion.

48. Samoa is listed in the London Scheme (The Extradition (Designated Commonwealth Countries) Order 1991 for extradition within the Commonwealth. Under the London Scheme, extradition is possible for offences punishable by imprisonment for two (2) years or more in both the requesting and requested states. Offences under the London Scheme are fiscal crimes, and crimes committed outside the requesting state that are considered extraditable offences in the requested state.

49. Possible obstacles to the implementation of the London Scheme have not been reported.

50. However, there is one reported case in the New Zealand Crown Law Office (on behalf of the New Zealand Government) v Leiataua [2020] WSDC 8 in which the Respondent had committed an extraditable offence. The Courts ruled that after being satisfied that there was sufficient evidence to warrant the Respondent’s trial if he had been committed within the jurisdiction of the Courts in Samoa, they ordered a committal of the Respondent to custody

to await the extradition of the Respondent to New Zealand. The Court also complied with its obligation under s10 (1) of the Act to inform the person in ordinary language of their right to review the committal order, and to notify the Minister of that Order.

51. The International Transfer of Prisoners Act 2009 provides for the facilitation of the transfer of prisoners between Samoa and certain other countries with which Samoa has entered into prison transfer agreements, generally or in respect of a particular person, to enable prisoners to serve their sentences in the countries of their nationality.

52. The Mutual Assistance in Criminal Matters Act of 2007 facilitates the granting and obtaining of international assistance in criminal matters. Requests from Samoa or a foreign state are made through the Attorney General, who may grant or deny the request in accordance with the requirements set forth in the Act.

53. The International Criminal Court Act of 2007 has its own provisions for extradition that may also be invoked. For example, section 36(1) of the Act provides that when a minister receives a request for the arrest and surrender of a person who is alleged to have committed an offence within the jurisdiction of the International Criminal Court (ICC), or who has been convicted by the ICC, the Minister must refer the request and documents to a judge and notify the Attorney General.

## **Article 14**

54. As noted above, Samoa's legislative framework provides for the provision of mutual legal assistance consistent with its obligations under the Convention under to the Mutual Assistance in Criminal Matters Act of 2007. Accordingly, Samoa and a foreign state may exchange requests for mutual assistance in criminal proceedings.

55. The Mutual Legal Assistance in Criminal Matters Act of 2007 allows Samoa to provide mutual legal assistance regardless of the existence of any treaty. The Office of the Attorney General ("OAG"), as requests must be made by or through the Attorney General. As noted above, the Act provides for a number of mutual legal assistance including locating or identifying persons (s27), obtaining evidence (s28), arranging for the attendance of persons to give evidence abroad (s33), search and seizure (s39), arranging for service and enforcement of foreign confiscation and restraining orders (s50).

56. There were no specific cases in which cooperation was requested or granted in connection with 'enforced disappearance'.

## **Article 15**

57. Mutual legal assistance to victims may be facilitated by the following provisions of the ICC Act 2007 as follows:

(a) Section 28 (a)(xi) of the Act provides that the ICC may make a request for assistance to the Minister where the prosecution is conducting or proposing to conduct an investigation into a crime within the jurisdiction of the ICC for the purpose of protecting victims and witnesses and preserving evidence;

(b) Section 72 of the same Act provides that the ICC may request assistance in protecting victims and witnesses or in preserving evidence. The Minister shall approve the request refer it to the AG if the Minister has reasonable grounds for believing that the assistance requested is not prohibited by Samoa law. The AG shall without delay, use its best endeavours to comply with the request, shall prepare a report on the outcomes of its efforts (which it considers appropriate in the circumstances) and shall forward that report to the Minister;

(c) Section 99 of the Act allows the ICC to send a request to the Minister to enforce an order requiring reparation for the victim, and provides for the following steps:

- (i) Once the Minister is satisfied with the requirements set out in s99(1)(a) and (b), he/she then authorises for this request and refers it to the Attorney General;
- (ii) Attorney General to file the order in the Supreme Court. These Orders are to have the same force and effect as if it were made in the Supreme Court;
- (iii) Attorney General, then promptly report the outcome to the Minister and advise on the steps to be taken to enforce for the Order;
- (iv) Minister then consults with the ICC whether the funds should be transferred directly to the specified victims or through the Victims Fund of the ICC;
- (v) Minister will then make arrangements for the transfer of the funds.

## Article 16

58. Under Section 6(1) of the Extradition Act 1974, section 6(1) provides that no person within the meaning of that Act shall be extradited to or detained in an extradition country if the Minister, the Court of committal or Supreme Court that the personal liberty of that being extradited will be in danger.

59. Section 10(1) of the Act provides that the Court shall inform the person of their right of action in the Supreme Court to redress of a contravention of the person's right to personal liberty or and obtain a review of the committal order.

60. Section 24(a) Mutual Assistance in Criminal Matters Act 2007 provides that the Attorney General may refuse a request by a foreign State for assistance under act if it is against the interest of justice. Whether legislation and practices concerning terrorism, emergency situations, national security, or other grounds that the State may have adopted have had any impact on the effective implementation of this prohibition – of extraditing when they will be harmed even more.

61. Part 9 of the Counter-Terrorism Act 2014 provides for the steps taken when arresting and extraditing suspected foreign terrorists. Section 57(1)(a) and (b) of the Act provides that if a police officer (using reasonable force) may arrest the person without undue delay bringing the person before the Supreme Court, suspects on reasonable grounds of committing a terrorist act.

62. Section 57 (3) of the Act provides that the Court will need to determine whether section 6 of the Extradition Act 1974 applies, and whether there is reasonable evidence available to determine whether that person should face trial for committing a terrorist act or is unlawfully at large after conviction for committing a terrorist act.

63. Once it is satisfied that it has met the above requirements set out in section 57(3)(a) and (b) the Court must order that the person remain in custody and be returned to the Commonwealth country or foreign country for that person to be put on trial for committing a terrorist attack.

64. There have been no reported cases and these provisions remain untested. However, there is inherent jurisdiction for appeal which may be sought.

65. Currently, the Samoa Police force does not provide specific human rights training to deal with or related to the expulsion, return or extradition of foreigners. Basic human rights education for new police recruits are offered to the Ministry of Police by the NHRI.

## Article 17

66. Article 6 of the Constitution provides for the right to personal liberty stating that “no person shall be deprived of his or her personal liberty life intentionally, except in accordance with the law”. The execution of a sentence of a Court following his or her conviction of an offence for which this penalty is provided by Act.

67. The Prisons and Corrections Act 2013 which provides for the management of prisons and the treatment of prisoners in accordance with Samoan customs and traditions and accepted practices and standards, and with an objective of providing a corrections-based system. Section 3(b) provides to ensure that international standards and obligations relating to the treatment of prisoners are recognised and applied (Samoa is Party to the International Covenant to Civil and Political Rights, Convention Against Torture and Other Cruel and Inhuman or Degrading Treatment or Punishment as well as the Standard Minimum Rules for the Treatment of Prisoners adopted at Geneva in 1955).

68. Measures requiring prompt notification of and access to lawyers, doctors, family members and, in the case of foreign nationals, consular notification are provided for under Section 37 of the International Criminal Court Act 2007, namely where a person is arrested under an ICC warrant.

69. Samoa has 5 resident missions in Apia and 21 non-resident embassies which citizens of these countries have access to.

70. The Office of the Ombudsman under the National Human Rights Institution is mandated under the Ombudsman Act 2013 to undergo regulated inspections of detention and other confinement facilities. To date, the NHRI have published 5 Detention Centre Inspection Reports spanning from the years 2016 to 2022. The focus of their recent report is on a COVID-19 assessment.

## **Article 18**

71. Under the Prisons and Corrections Act 2013, section 42 states that no prisoner is to be subject to denial of visitation rights or the right to communicate with a friend, family, visiting Justice, visiting Medical Officer, registered medical practitioner, prisons Chaplain, religious representative, or community representative.

72. Prisoners' rights to visits and the right to information for those who have legitimate interest in the prisoner, is further found in the ICC Act Section 86, which indicates that persons in custody may be visited by a judge or staff member of the ICC to hear representations by the prisoner without the presence of any other person.

## **Article 19**

73. The Police Powers Act 2007 provides for procedures for forensic samples. Section 21 states that only when grounds are reasonable for suspecting that a person is planning, participating in, or committing, or has planned, participated in, or committed a serious offence, that a forensic sample may be authorized, in order to provide evidence of the offence.

74. Section 22 provides general rules for carrying out a forensic procedure which includes that there be reasonable privacy to the suspect when the procedure is carried out. A forensic sample taken from a suspect must be made available as soon as practicable to the suspect, if there is sufficient material for an analysis to be carried out. Reasonable care is taken to ensure the suspect's part of the material is protected and preserved until the suspect receives it. Section 34 provides for warrant of forensic samples – a warrant is issued if the Judge is satisfied that there is reasonable ground to believe that the forensic sample will be evidence for an offence.

## **Article 20**

75. Refer to discussions of paragraphs 69–70 for persons' with legitimate interest's access to information concerning the arrested.

76. Under the Evidence Act 2015, section 59 provides steps to ensure the confidentiality of persons in which evidence is provided for/against, during a court proceeding. It states that confidential information and communication may not be disclosed in a proceeding as well as information that would reveal the confidential source of information. Further, under

subsection (3) (a) – the Judge must have regard to the likely extent of harm that may result from the disclosure of the communication or information.

## Article 21

77. The Prisons and Corrections Act 2013, provides for practices to ensure that prisoners have been released. Moreover, in Section 12, subsections (2) and (3) provide that any doubts regarding the date of discharge of a prisoner or doubts regarding the lawful authority of a person into whose custody a prisoner is to be released, must be referred to the Commissioner for a decision. The Commissioner may refer to the Attorney General for an opinion if he/she is unable to clarify a doubt.

78. Initial classification of all convicted prisoners is laid out under Section 31 and subsection (2) states that a date of release for each prisoner is to be determined and recorded in the prisoners' records.

79. Under the ICC Act 2007, the ICC is required to inform the relevant Minister, when the arrested person is no longer required to be surrendered upon the request of the ICC. The Minister shall notify the judge of that fact and the judge shall on receipt of the notification make an order for the discharge of the person.

## Article 22

80. Section 6 under Samoa's Constitution provides for rights of persons not to be deprived of their personal liberty. Subsections 2 and 3 indicate that detained persons shall be informed promptly of the grounds of his or her arrest and charges and shall be allowed to consult a legal practitioner of his or her own choice without delay. If a complaint is made that a person is being unlawfully detained, the court shall inquire into this and unless satisfied that detention is lawful, the detained person shall be released.

81. Subsection 4 states that every person who is arrested or otherwise detained shall be produced before a Judge of the Supreme Court, some other judicial officer, the Registrar of the Supreme Court or of any subordinate Court or any Assistant Registrar of the Supreme Court or of any subordinate Court within a period of 24 hours (excluding the time of any necessary journey), and no such person shall be detained beyond that period without the authority of one of the remanding officers.

82. Section 9 of the Constitution provides for the right to a fair trial and for persons arrested to be informed, in their preferred language, of the accusation against them.

83. The ICC Act 2007 provides for the rights of arrested persons under Section 37 which includes that a warrant be provided for the arrested person, and that the judge may determine (at the request of the arrested person) whether the arrest was lawful and whether the person's rights were respected during the arrest.

84. All prisoners are to undergo initial classification as referenced in paragraph 74–76 and are to be provided with information about all aspects of their incarceration, as denoted under the Prisons and Corrections Act 2013.

85. The Extraditions Act 1974 states that the Court shall inform the person (committed to custody) in ordinary language of the person's right of action in the Supreme Court for redress of a contravention of the person's right to personal liberty or for review of the order of committal and shall forthwith give notice of the committal to the Minister.

## Article 23

86. While Samoa does not provide trainings specific to enforced disappearance, there have been human rights related trainings undertaken by law enforcement officers that have been organised by the NHRI to improve on the quality of their work. These trainings included the 'Quality Evidence without Re-Victimisation: Promoting Special Measures for Vulnerable SGBV Complainants in 2019 as well as a Court Reporting Guide that the Ministry of Justice

and Courts Administration (MJCA), Police and Journalists Association of Western Samoa (JAWS) Media Association have finalised. This Guide is to recognise the rights of the media in reporting court proceedings and to improve the quality of court reporting to inform the public accurately. This was helpful for Police and court registrars in the safeguarding of the rights of victims (especially children). The NHRI and Police continue to provide Basic Human Rights Education for police recruits.

## Article 24

87. While Samoa does not have standalone legislation pertaining to victims of crimes, there is definition of a victim provided for under the Sentencing Act 2013. This definition defines a victim as; (i) a person against whom an offence is committed by another person; or (ii) a person who, through, or by means of, an offence committed by another person, suffers physical harm, or loss of, or damage to, property; or (iii) a parent or legal guardian of a person, who falls within subparagraph (i) or (ii), unless that parent or guardian is charged with the commission of, or convicted or found guilty of, or pleads guilty to, the offence concerned; or (iv) a member of the immediate family of a person who, as a result of an offence committed by another person, dies or is incapable, unless that member is charged with the commission of, or convicted or found guilty of, or pleads guilty to, the offence concerned.

88. Reparation of victims is provided for under the Rome Statute in Article 75. The enforcement of orders for victim's reparations is provided under Section 99 of the ICC Act.

## Article 25

89. 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, 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.

90. Relevant to the Convention relating to enforced disappearance is the Crimes Act 2013 specifies charges for the kidnapping of children (under ages 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).

91. The provisions under the Infants Ordinance 1961 in relation to adoption are to be interpreted and applied to ensure the best interests of the child. In other words, adoption matters are to be dealt with, with the aim to ensure that an adopted infant is not subjected to harm or danger (which may include the possibility of being subjected to enforced disappearance as a matter for the Courts to consider in their assessment before granting an adoption order). As mentioned above, this is the paramount principle upheld by the Courts in the exercise of their discretion and jurisdiction under the family laws of Samoa, particularly in matters involving children.

92. Finally, Samoa is a party to the Convention on the Rights of Children and there have been significant work done by Government and its stakeholders in order to improve and protect the lives of children.