



HAUT-COMMISSARIAT AUX DROITS DE L'HOMME • OFFICE OF THE HIGH COMMISSIONER FOR HUMAN RIGHTS  
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2 November 2021

Dear Ms. Luamanuvao Katalaina Sapolu,

On behalf of the Secretariat of the Global Alliance of National Human Rights Institutions (GANHRI), I am writing to inform you of the recommendations that GANHRI Sub-Committee on Accreditation (SCA) has made regarding the re-accreditation of your institution, which was considered at the SCA session held virtually from 18 to 29 October 2021.

In accordance with article 12.1 of the GANHRI Statute, your institution may challenge the recommendations by submitting a letter to GANHRI Chairperson, through OHCHR National Institutions and Regional Mechanisms Section, within twenty-eight (28) days from the date of this letter.

Thereafter, the recommendations will be forwarded to the members of GANHRI Bureau for approval. If a challenge is received from your institution, the challenge together with all relevant materials will also be forwarded to the GANHRI Bureau. The decision of the GANHRI Bureau on re-accreditation will be considered final. The report will be made public following its adoption by the GANHRI Bureau.

Please direct any future correspondence on the recommendations to [sisi.shahidzadeh@un.org](mailto:sisi.shahidzadeh@un.org), [johnny.white@un.org](mailto:johnny.white@un.org), [leselle.lugon@un.org](mailto:leselle.lugon@un.org), and [fellow.belen@un.org](mailto:fellow.belen@un.org).

Yours sincerely,

Afarin Shahidzadeh

Secretary, GANHRI Sub-Committee on Accreditation  
Deputy Chief, National Institutions and Regional Mechanisms Section

**Ms. Luamanuvao Katalaina Sapolu**

Ombudsman

Office of the Ombudsman / National Human Rights Institution of Samoa

PO Box 3036, Apia, Samoa

**cc: Mr. Phillip Wardle, APF**

## **1.6 Samoa: Office of the Ombudsman/National Human Rights Institution Samoa (Ombudsman)**

**Recommendation:** The SCA recommends that the Ombudsman be re-accredited with **A** status.

The SCA highlights that NHRIs that have been accredited A status should take reasonable steps to enhance their effectiveness and independence, in line with the Paris Principles and the recommendations made by the SCA during this review.

The Ombudsman is encouraged to continue to actively engage with the OHCHR, GANHRI, APF, as well as relevant stakeholders at international, regional, and national levels in order to continue strengthening its institutional framework and working methods.

### **The SCA notes:**

#### **1. Human rights mandate**

The SCA still notes that Section 2 of the Ombudsman (Komesina o Sulufaiga) Act 2013 (the Act) defines human rights as those contained in the Constitution, other laws, customary international law and international human rights treaties listed in Schedule 1 of the Act, which does not include the Covenant on Economic, Social, and Cultural Rights. The SCA also notes that the mandate of the Ombudsman does not encompass the acts or omissions of private entities.

The SCA acknowledges that the Ombudsman interprets its mandate broadly to include economic, social, and cultural rights under the Universal Declaration of Human Rights as customary international law, and implements activities to address issues surrounding these rights, including the right to education, health, employment, and the impact of climate change on the full range of rights. The SCA encourages the Ombudsman to continue to interpret its mandate broadly to include the promotion and protection of all human rights.

An NHRI's mandate should be interpreted in a broad, liberal, and purposive manner to promote a progressive definition of human rights, which includes all rights set out in international, regional, and domestic instruments, including economic, social, and cultural rights.

The SCA further emphasizes that the mandate of an NHRI should extend to the acts and omissions of both the public and private sectors.

The SCA encourages the Ombudsman to advocate for the amendment of its enabling law to include the ability to address all human rights violations resulting from the acts and omissions of private entities.

In this regard, the SCA emphasizes that, where an NHRI has been mandated with additional responsibilities, it must be provided with additional resources to enable it to assume the responsibilities of discharging these functions.

The SCA refers to Paris Principles A.1, A.2, A.3, and B.2 and to its General Observations 1.2 on 'Human rights mandate' and 1.10 on 'Adequate funding of NHRIs'.

## **2. Addressing human rights violations**

The SCA notes that the Ombudsman has never received any human rights violations complaints from individuals, even if provided for under Section 38 of the Act. The SCA acknowledges that the Ombudsman has received individual complaints relating to matters of good governance and special investigations, which often have human rights dimensions.

The SCA encourages the Ombudsman to strengthen its efforts to raise public awareness on its mandate to protect human rights and address human rights violations. The SCA further encourages the Ombudsman to ensure that its positions on these issues are made publicly available, as this will contribute to strengthening the credibility and accessibility of the institution for all people in Samoa.

The SCA emphasizes protection functions may be understood as those that address and seek to prevent actual human rights violations. Such functions include monitoring, inquiring, investigating, and reporting on human rights violations, and may include individual complaint handling.

The SCA refers to Paris Principles A.1, A.2, and A.3 and to its General Observation 1.2 on 'Human rights mandate'.

## **3. Monitoring places of deprivation of liberty**

Section 33(e) of the Act provides the Ombudsman with the power to visit all public and private places of voluntary confinement or detention subject to certain limitations and procedural requirements under Section 48 of the Act.

While the SCA acknowledges that, in some circumstances, it may be necessary to provide notice for such visits for reasons such as security, it is of the view that an NHRI should be mandated to conduct 'unannounced' visits to all places of detention within its jurisdiction as these limits opportunities for detaining authorities to hide or obscure human rights violations and facilitates greater scrutiny.

The SCA encourages the Ombudsman to advocate for amendments to its enabling law to provide for an explicit mandate to conduct ad hoc and unannounced visits to all places of deprivation of liberty.

In the interim, the SCA encourages the Ombudsman to continue to access all places of deprivation of liberty in a timely, regular and ad-hoc manner in order to effectively monitor, investigate, and report on the human rights situation, especially in the context of the COVID-19 pandemic. It further encourages the Ombudsman to undertake systematic follow-up activities and advocate for the consideration and implementation of its findings and recommendations in order to ensure the protection of detainees.

The SCA refers to Paris Principles A.2, A.3, and D(d) and to its General Observations 1.2 on 'Human rights mandate' and 1.6 on 'Recommendations by NHRIs'.

#### **4. Adequate funding**

While the SCA acknowledges that the Ombudsman's budget has increased since 2017 and that it has utilized its existing budget to undertake relevant activities, it notes that the Ombudsman has reported that it does not have sufficient funding, particularly in view of its efforts to conduct more research and advocacy activities on emerging issues such as the human rights implications of technology.

The SCA emphasizes that, to function effectively, an NHRI must be provided with an appropriate level of funding in order to guarantee its ability to freely determine its priorities and activities. In particular, adequate funding should, to a reasonable degree, ensure the gradual and progressive realization of improvement in the NHRI's operations and the fulfilment of its mandate.

Provision of adequate funding by the State should, at a minimum, include the following:

- a) The allocation of funds for premises, which are accessible to the wider community, including for persons with disabilities. In certain circumstances, in order to promote independence and accessibility, this may require that offices are not co-located with government agencies. Where possible, accessibility should be further enhanced by establishing a permanent regional presence;
- b) Salaries and benefits awarded to staff comparable to those of civil servants performing similar tasks in other independent institutions of the State;
- c) Remuneration of members of the decision-making body (where appropriate);
- d) The establishment of a well-functioning communications system including telephone and internet; and
- e) The allocation of a sufficient amount of resources for mandated activities. Where the NHRI has been designated with additional responsibilities by the State, additional financial resources should be provided to enable it to assume the responsibilities of discharging these functions.

The SCA encourages the Ombudsman to continue to advocate for an appropriate level of funding to carry out its mandate effectively and independently.

The SCA refers to Paris Principle B.2 and to its General Observation 1.10 on 'Adequate funding'.

#### **5. Annual report**

Section 40 of the Act requires the Ombudsman to submit a report on the status of human rights to the Legislative Assembly. The Act requires the Legislative Assembly to refer the report to the Parliamentary Committee responsible for human rights to scrutinize the report. However, the Ombudsman reports that in practice, these provisions, are not always implemented.

Annual, special, and thematic reports serve to highlight key developments in the human rights situation in a country and provide a public account, and therefore public scrutiny, of the effectiveness of an NHRI. The reports also provide a means by which an NHRI can make recommendations to government and monitor respect for human rights by government.

The SCA stresses the importance for an NHRI to prepare, publicize, and widely distribute an annual report on its national situation with regard to human rights in general, and on more specific matters. This report should include an account of the activities undertaken by the NHRI to further its mandate during that year and should state its opinions, recommendations and proposals to address any human rights issues of concern.

The SCA considers it important that the enabling laws of an NHRI establish a process whereby its reports are required to be widely circulated, discussed, and considered by the legislature.

The SCA encourages the Ombudsman to continue to advocate for the full implementation of Section 40 of its enabling law regarding the requirement for the legislature to scrutinize and debate the content of the Ombudsman's annual report.

The SCA refers to Paris Principle A.3 and to its General Observation 1.11 on 'Annual reports of NHRIs'.

## **6. Term of office**

According to Article 82A(3) of the Constitution, the Ombudsman is 'appointed for a 6-year term and is eligible for re-appointment'. The Constitution and the Act are silent on the number of times the Ombudsman can be re-appointed, which leaves open the possibility of unlimited tenure. The Ombudsman reported that the previous Ombudsman was in office for 27 years.

In order to promote institutional independence, the SCA is of the view that it would be preferable for the term of office to be limited to one (1) re-appointment. The SCA encourages the Ombudsman to advocate for amendments to the Constitution and its enabling law to provide for such limits on the term of office.

The SCA refers to Paris Principle B.3 and to its General Observation 2.2 on 'Full-time members of an NHRI'.

## **7. Staffing**

The SCA notes that there are only three (3) staff positions in the human rights unit of the Ombudsman, one of which is currently vacant. The SCA also notes that due to limited staff, the Ombudsman works regularly with consultants and Government Ministries. The Ombudsman reports that in doing this, it also reciprocates, deploying their human rights expertise for different Government Ministries.

A fundamental requirement of the Paris Principles is that an NHRI is, and is perceived to be, able to operate independent of government interference. The SCA highlights that this requirement should not be seen to limit the capacity of an NHRI to hire public servants with the requisite skills and experience. However, the recruitment process for such positions should

always be open to all, clear, transparent, merit-based and at the sole discretion of the NHRI. Where an NHRI is required to accept staff assigned to it by the government, and in particular where this includes those at the highest levels in the NHRI, it brings into question its capacity to function independently.

NHRIs must be provided with sufficient resources to permit the employment and retention of staff with the requisite qualifications and experience to fulfil the NHRI's mandate. Such resources should allow for salary levels, and terms and conditions of employment, equivalent to those of other independent State agencies.

The SCA encourages the Ombudsman to continue advocating for an adequate level of funding so as to permit the employment and retention of staff with the requisite qualifications and experience to fulfil the NHRI's mandate.

The SCA also encourages the Ombudsman to ensure its independence even while working with external consultants and Government Ministries to implement programs and projects.

The SCA refers to Paris Principle B.2 and to its General Observation 2.4 on 'Recruitment and retention of NHRI staff'.