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| OMBUDSMAN LOGO.jpg | **Coat_of_arms_of_Samoa.svg.png**Komesina o Sulufaiga |

UN Working Group on Business and Human Rights

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CALL FOR INPUTS BY THE WORKING GROUP ON BUSINESS AND HUMAN RIGHTS ON THE ROLE OF NATIONAL HUMAN RIGHTS INSTITUTIONS IN FACILITATING ACCESS TO EFFECTIVE REMEDY FOR BUSINESS-RELATED HUMAN RIGHTS ABUSES

**BACKGROUND: SAMOA OMBUDSMAN/NHRI**

**The NHRI Samoa is a triple mandate office. It initially functioned as an Ombudsman Office implementing good governance mandate since it’s establishment in 1988 under the Ombudsman Act 1988. In 2013, the Ombudsman under it’s revised Act (Ombudsman Act 2013) was given two additional mandates and one of them was to promote and protect human rights (the other is to investigate complaints against police and prisons). With the human rights function introduced in 2013 and complete recruitment of staff in 2014, the work to implement the human rights function only started when upon complete recruitment of staff in late 2014. There is 3 human rights staff. The whole Ombudsman office is 13. We sometimes host volunteers through volunteer programs ( Australia, USA, UN) or receive technical assistance through our regional/international partners (APF, OHCHR, SPC-RRRT) to provide extra support/assistance/expertise to the human rights staff.**

**QUESTIONS**

1. **The role and mandate of NHRIs in facilitating access to effective remedy for business-related human rights abuses**
2. ***Does your NHRI have an explicit or implicit mandate to handle complaints concerning alleged business-related human rights abuses? If yes, what methods (e.g. mediation or conciliation) can be used to facilitate access to remedy for human rights abuses?***

The Ombudsman Act 2013 outlines our mandate as an NHRI. We have an explicit mandate to receive individual complaints whether oral or written about breaches of human rights generally. There is no specific reference to handling complaints of alleged business-related human rights abuses. Our Act further provides that we may not investigate (individual complaints) but can however form a basis of a national inquiry.

In essence, the Act gives us the discretion whether or not to investigate individual complaints. At the moment we do not investigate individual complaints of breach of human rights because of the lack of staff. By way of background, this was the intention from the timeof the establishment of the office due to budget and resource constraints of the Government. It is the vision of this office in the near future that it will investigate individual complaints when it has full capacity.

However, this does not mean that we will disregard any human rights complaint that comes through or not take any other relevant action. So far, we have yet to receive any individual complaint except one which was in relation to a SOGIESC matter. Despite our current status, the Ombudsman took on board the complaint and provided a public statement to address some human rights misconceptions with regards to the reporting approach of the media of a faafafine who had allegedly committed suicide. Also, individual complaints as per the Act can form a national inquiry.

On the other hand, since our office model is an Ombudsman/NHRI model, we have had instances where we have investigated some human rights related matters under our good governance function. This is part of the work of the good governance division is to incorporate human rights approach in every investigation. However, this only extends to complaints against Government departments and state owned enterprises, not private businesses. With this function we mediate or recommend compensation or reinstatement or any reasonable solution.

1. ***What types of remedies can your NHRI offer to individuals or communities affected by business-related human rights abuses? Do you consider those remedies to be effective?***

 Refer to Q1 above

1. ***Does your NHRI have a mandate to investigate, conduct inquiry and adjudicate individual cases of alleged human rights abuses by businesses? If yes, please provide relevant statistics in relation to complaints received and adjudicated.***

 N/A.Refer to answer to Q1 above

1. ***Does your NHRI give any special attention to facilitate access to your complaint mechanisms by vulnerable or marginalised groups? If yes, what measures have been taken in this regard?***

 N/A. refer to answer to Q1 above.

1. ***What gender-sensitive and gender-responsive measures your NHRI take in dealing with cases of alleged business-related human rights abuses?***

 NO. refer to answer to Question 1 above.

1. ***What other measures does your NHRI undertake to facilitate access to remedy indirectly for business-related human rights abuses (e.g. raising awareness about rights and remedial mechanisms, providing legal assistance, building capacity of communities or businesses, assessing effectiveness of other grievance mechanisms, and recommending reform of the national legal system to strengthen access to remedy)?***

One of our core human rights function is to carry out awareness and educational programmes/activities to raise awareness about human rights and promote efforts to combat all forms of discrimination. We are to monitor and promote compliance with international and domestic human rights law through: (a) making recommendations as to the desiresbility of Samoa becoming a party to a human rights instrument, (b) rviewing existing and proposed legislation or other laws/policies and recommending changes or other measures to protect human rights, (c) advising the Government on it’s reporting obligations under international human rights instruments, (d) providing information to the international human rights system.

We also provide advice to Government on other human rights related matters, build capacities of government agencies as well as communities. We also have the amicus curiae mandate (but we have yet to implement this mandate due to lack of staff).All of these measures are generally implemented. There is nothing specific to business and human rights. This is simply because:

(1) business and human rights is a new area for our office and we have yet to explore this space more

(2) of the lack of staff (we only have 3 including myself) and as a result we have to prioritize our issues.

We are currently building our capacity around the amicus function.

1. ***How does your NHRI collaborate with other judicial or non-judicial remedial mechanisms (e.g. courts, labour tribunals, National Contact Points, and operational level grievance mechanisms) in dealing with complaints concerning business-related human rights abuses?***

As noted above in Q6 Above we have the amicus curiae function but yet to function. We are however looking to explore this function come next year. We see this as a way that we can collaborate with judicial remedial mechanisms by assisting them with human rights cases which may include business and human rights abuse.

We may also consider lookin into collaborating with our Ministry of Labour which deals with complaints of private companies. Perhaps this can be an entry point where we can work in collaboration to raise awareness of business and human rights abuses and see where we can incorporate a human rights approach.

1. ***Can your NHRI deal with alleged business-related human rights abuses with a transnational or cross-border dimension (e.g. through informal visits and exchange of information or a cooperation arrangement with counterparts in other States)?***

We have a well-established cooperation with international and regional human rights organizations (GAHNRI, APF, SPC-RRRT,OHCHR, UNWomen, UNFPA, UNDP, UNICEF), national human rights institutions of other countries, as well as partner embassies and diplomatic representatives. Within the established cooperation mutual study visits, exchange of information and expertise as well as other capacity building activities are initiated.

1. ***Is your NHRI involved in any initiatives to stimulate effective multi-stakeholder grievance mechanisms to strengthen access to remedy for business-related human rights abuses?***

 Refer to Q7 and Q1 above

***10. Where a National Action Plan on Business and Human Rights exists (or is under development), does it provide for a role for NHRIs in relation to access to remedy in case of business-related human rights abuses?***

 We do not have a National Action Plan on Business and Human Rights. Refer to Q1 above

1. ***Challenges and limitations faced by NHRIs in facilitating access to effective remedy for business-related human rights abuses***
2. ***What are the most critical challenges and limitations (e.g., legal, practical, or financial) that your NHRI has experienced in facilitating access to effective remedy in business-related human rights abuses? How could these challenges or limitations be overcome?***

As noted earlier, We are a new and small office.We do not, at the moment, have the manpower to explore other or implement work on multiple human rights issues. For this reason, we try and priorities our human rights issues. Also, Business and human rights abuses is a new area for us and so we are slowly learning and trying to see how we can best incorporate it into our work. Refer to Q1 &Q6 in Part I above.

How can we overcome these challenges? Aside from recruiting additional staff members, we need to build our capacity on business and human rights. We foresee that we may need to see what the status is of the understanding of the Government and public about business and human rights. From this exercise we are able to identify the gaps that needs to be addressed.

1. ***What additional challenges has your NHRI faced in dealing with complaints with a transnational dimension (e.g., exploitation of migrant workers, or cross-border environmental pollution)?***

 N/A. Refer to Q1 in part I above.

1. ***How has your NHRI dealt with complaints involving multiple victims?***

 N/A. Refer to Q1 in Part I above.

1. ***What has been the experience of your NHRI in dealing with complaints concerning parent and subsidiary companies or the supply chain of a company?***

N/A. Refer to Q1 in part I above.

1. **Good practices, innovations and recommendations to strengthen the role of NHRIs in facilitating access to effective remedy for business-related human rights abuses**
2. ***Can you share any good practice examples in which your NHRI was able to facilitate, directly or indirectly, effective remedies for business-related human rights abuses?***

Refer toQ1 in part I above.

However, we feel that if we were to explore this area of human rights, we will adopt our foundation approach that has been/is working for us in our education and awareness programs to try and dispel the misconception of human rights with our community and children. This is through weaving together samoa’s cultural values that are similar with human rights principles- such as respect, love, security, dignity etc. It is about making that link/similarities and showing that these two go hand in hand and human rights has always been embedded in our culture. We will use the same approach in the working space. Extend it further to link every work ethic principle to human rights and cultural values. In essence, we think that NHRIs need to look into what already exists within their society that can relate to people and use it to their advantage.

1. ***Are there good practice examples of your NHRI supporting the work of civil society and human rights defenders (including women human rights defenders) working to secure access to effective remedy for business-related human rights abuses?***

Our approach that we see works best is The collective approach-making sure our partners are included in our work. Any work that we carry out we make sure to get on board the relevant partner with the relevant expertise whether Govt or CSO or private to collaborate in taking the work forward.

1. ***Can you identify any innovative steps taken by your NHRI in overcoming various challenges and limitations faced in dealing with complaints concerning business-related human rights abuses?***

 Refer to Q1 in Part 1 above

1. ***What measures should be taken to strengthen the mandate, role and capacity of NHRIs in facilitating access to remedy for business-related human rights abuses?***

 Building the staff’s capacity and equip with sustainable resources

1. ***How could NHRIs collaborate with regional and international human rights monitoring mechanisms (including the Universal Periodic Review) to facilitate access to remedy for business-related human rights abuses?***

Samoa NHRI produces annual state of human rights report to Parliament on the status of human rights in that year. When we are due to provide alternative reporting to international human rights monitoring mechanisms we also include these issues (main ones) in our report. So far, the HR monitoring mechanisms (e.g UPR, CEDAW Committee, CRC committee) have picked up our reports and recommendations have raised them to our Govt for action.