



*Office of the Ombudsman/
National Human Rights
Institution*

Information concerning Samoa and the Convention on the Rights of the Child

Samoa NHRI Submission to the United
Nations Committee on the Rights of the Child

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1 Introduction

1. This submission was prepared by the Office of the Ombudsman, Samoa, which is Samoa's National Human Rights Institution (NHRI). It provides information to the Committee on the Rights of the Child regarding the implementation of the Convention on the Rights of the Child (the Convention) in Samoa for the period 2006-2015.
2. Given that the NHRI only received its human rights mandate in 2013, it does not, as yet, have the capacity to provide an extensive and thorough report on the implementation of all the obligations under the Convention. As the NHRI's capacity and resources develop so will its capacity to comprehensively report on Samoan Government's implementation of all the rights and obligations contained under the Convention.
3. In light of this, this report is based on the information and data which formed the basis of the NHRI's first State of Human Rights Report (SHRR), which was submitted to the Samoan Parliament on 30 June 2015. The NHRI collected data through surveying, consultation and focus groups, including via the NHRI's Human Rights Survey 2014-15 (the Survey), which collected a total of 2515 surveys that sampled an age range between 10 and 88. In addition to data obtained in the course of the SSHR, this report is also based upon information collected during the NHRI's first program of inspections of places of detention, undertaken in January 2015.
4. The report aims to highlight various children's rights issues which are prevalent in Samoa, as well as inform the Committee about how the *fa'asamoa* (the Samoan way of life) influences these issues and the protection of children's rights in Samoa in general. The report makes recommendations to the Samoan Government with regarding how it can better meet its obligations under the Convention and ensure that the rights of the child are fully protected in Samoa.

2 National Developments

5. Since the Committee's last CRC Periodic Review of Samoa in 2006, the Government has attempted to address many of the recommendations that were contained within the Committee's Concluding Observations.
6. One of the key developments in the protection and promotion of human rights in Samoa is the establishment of the Office of the Ombudsman as the National Human Rights Institution (the NHRI). The NHRI's functions include, but are not limited to, the power to 'monitor and promote compliance with international and domestic human rights law including...providing information to the international human rights system, including the Human Rights Council and its

mechanisms and the human rights treaty monitoring bodies'.¹ It is under this mandate that the NHRI makes its submission to the Committee.

7. The NHRI welcomes the following key developments in the protection of child rights in Samoa:
 - The establishment of the Samoa Law Reform Commission (SLRC) in 2008. Under the *Samoa Law Reform Commission Act 2008*, the Commission researches and analyses areas of law referred to it by the Prime Minister, Cabinet or the Attorney General. It subsequently reports its findings and provides recommendations for reform to the Prime Minister and the Attorney General. The Commission has delivered reviews of legislation in Samoa that are directly related to child rights, including a review into the *Child Care and Protection Bill* currently before Parliament;
 - The enactment of the *Education Act 2009* which includes the prohibition of corporal punishment in schools and which regulates the employment of school-aged children;
 - The enactment of the *Labour and Employment Relations Act 2013* which raised the minimum age for hazardous work to 18.
 - Samoa became a member of the International Labour Organization in 2005 and by 2008 had ratified all 8 fundamental conventions, including the ILO 182 Convention on the Worst Forms of Child Labour.
 - With the assistance of the ILO, taking steps to ensuring a national approach to preventing child labour, including the establishment of the Child Labour Taskforce.
 - The Baseline Research on Child Protection in Samoa carried out in 2011 by Ministry of Women Community and Social Development in collaboration with UNICEF (United Nation International Children's Emergency Fund).

3 Understanding human rights in Samoa

8. In order to understand children's rights in Samoa, it is important to understand the relationship between *fa'asamoa* and broader international human rights principles.
9. *Fa'asamoa* is a way of life that is distinctly unique to Samoa. It prescribes an all encompassing system of roles and responsibilities that spell out different relationships within the family and the community.

¹ *Ombudsman (Komesina o Sulufaiga) Act 2013*, s 33(c)(iv). See s 33 generally for a full list of the functions of the NHRI. Section 40 requires the NHRI to prepare an annual report of the state of human rights in Samoa to be submitted to the Samoan Parliament by 30 June each year.

10. The traditional *fa'amatai* system (village councils) is central to the organisation of Samoan society. The authority of village councils has played a vital role in maintaining and preserving peace, harmony, security and stability through customary law and traditions, especially in the rural areas where the majority of Samoans reside. The Government relies heavily on this system for the maintenance of law and order throughout Samoa.
11. Human rights are underpinned by the core values of universality, interdependence and indivisibility, equality and non-discrimination.² Similarly, the *Fa'asamoa* holds core values that guide social interaction such as respect, dignity, love, protection, and service. The NHRI believes that international human rights principles and the core values of *fa'asamoa* mutually reinforce each other.
12. When drafting the Constitution, Samoa's forefathers understood the relationship between *fa'asamoa* and human rights when it incorporated fundamental human rights into the Constitution.³ Yet, some Samoan's view human rights as a foreign concept that does not have a place in Samoa. There is a misconception that human rights and *fa'asamoa* conflict rather than mutually reinforce each other. The reason for this seems to stem from the Samoan translation of 'human rights'. Some Samoans imply from the Samoan translation that 'human rights' means that individuals have the freedom to do anything they want without any limitations.
13. The Survey conducted by the NHRI, which formed the baseline data for the SHRR, found that a large majority of participants (76%) claimed to know what human rights are. Of the 76 % who claimed they had knowledge of human rights, 69 % claimed that human rights and *fa'asamoa* conflict with each other. The perceived conflict between *fa'asamoa* and international human rights principles is central to understanding human rights issues in Samoa, including children's rights issues. Its resolution will undoubtedly also have a bearing on early success in progressing human rights in Samoa.
14. This perceived conflict has significant ramifications for the protection of children's rights in Samoa. Village and church leader consultations with the NHRI indicated widespread misconceptions about the implications of human rights for Samoa's children. From these consultations, there appears to be

² *Universal Declaration of Human Rights* UN General Assembly, *Universal Declaration of Human Rights*, 10 December 1948, 217A(III), available at

<http://www.refworld.org/docid/3ae6b3712c.html> [accessed 26 August 2015];

³ The *Constitution of the Independent State of Samoa 1960* (came into force 1 January 1962); see the right to life (Article 5); right to personal liberty (Article 6); right to freedom of inhuman treatment (Article 7); right from forced labour (Article 8), the right to a fair trial (Article 9); right to freedom of religion (Article 11,12) rights regarding freedom of speech, assembly, association, movement and residence (Article 13) and freedom from discriminatory legislation (Article 15). These rights correspond directly with rights enshrined in the UDHR, see the right to life (Article 3), freedom from inhumane treatment (Article 5), the right to a fair trial (Article 10), freedom of thought and religion (Article 18), rights regarding speech, assembly, association, movement and residence (Articles 20 and 13, respectively), and freedom from discriminatory legislation (Article 7).

three factors contributing to the lack of understanding of the true meaning of children's rights in Samoa.

1. Some Samoans believe human rights give children the freedom to misbehave and disobey their parents. This may be as a result of the translation of the term 'human rights discussed above;
 2. The traditional status of a Samoan child within the family is that the child must obey and do as s/he is told by their parents without further discussion;
 3. Children themselves are confused about what is meant by human rights. Some children believe human rights give them the right to do what they want without any limitations. This attitude reinforces concerns raised by parents who blame human rights for their children misbehaving.
15. Ultimately, there needs to be continued education on human rights in Samoa, including the relationship between *fa'asamoa* and international human rights. The SHRR was an initial step in addressing this issue. The NHRI will endeavour to implement its human rights education and outreach mandate so that all Samoans are aware of the true nature of human rights and are able to adequately access and enforce their rights as human rights holders.
16. However, the NHRI believes that the government needs to assist the NHRI more in tackling the misconceptions that exist in Samoa regarding human rights, including children's rights. This assistance could be in the form of awareness campaigns run by government ministries, such as the Ministry of Women, Community and Social Development, in conjunction with the NHRI which seeks to inform Samoans, especially rural communities, about basic human rights principles, including those under the Convention.

Recommendation 1: The NHRI reaffirms the Committee's recommendation from its 2006 Concluding Observations.

That the Samoan Government continues to strengthen its efforts to ensure that the provision and principles of the Convention are widely recognised and understood by adults and children alike. In this regard, it encourages the Government to continue to disseminate and raise awareness of the Convention among children, their parents and other caregivers and all relevant professional groups working with and for children. The Committee also invites the State party to engage with community leaders, including church leaders, in discussion on children's rights in the context of Samoan culture, with a view to bringing about further changes in the attitudes and behaviour of these key opinion leaders in society

4 Definition of the child

17. Inconsistencies exist within Samoan legislation regarding the definition of the child and which are inconsistent with Article 1 of the Convention. In February 2013, the SLRC issued its final report on the Child Care and Protection

Legislation as a result of a Baseline Research on Child Protection in Samoa.⁴ The report clearly highlights examples of inconsistencies of the definition of “child” in domestic legislation:⁵

- The *Infants Ordinance 1961*. Ambiguity exists within the Act as it defines a “child” as any infant under the age of sixteen years. Yet, the Act also refers to an “infant” as a person under the age of 21 years;
- A person under the age of 21 years is referred to as a “minor” under the *Acts Interpretation Act 1974*;
- Under the *Marriage Ordinance 1961*, the minimum age of marriage for females is sixteen 16 years, while for males it is 18;
- The definition of child can also be found in the *Fatal Accidents Act 1974*⁶. The term child is generally defined as to include a son, daughter, grandson, granddaughter, stepson, stepdaughter and it includes a child out of wedlock, which is most commonly known as an illegitimate child. This Act does not provide for a specific age of a child but rather provides the above list of persons who are regarded as children.⁷

18. As a result of the SLRC report, the *Child Care and Protection Bill* was drafted for the purposes of the care and protection of children in Samoa and for the recognition and enforcement of the rights of children in a manner which is consistent with international conventions and standards. The Bill intends to standardise the minimum legal age for marriage for girls from 16 to 18 so that it is the same as the minimum age for boys. Furthermore, the Bill will harmonize the definition of child in all domestic legislation.⁸

Recommendation 2: The NHRI endorses the findings and recommendations of the SLRC’s Child Care and Protection Legislation Report with regards to the inconsistencies in the definition of a child in domestic legislation. The NHRI recommends that the Samoan Government include all the recommendations from the SLRC report into the Child Care and Protection Bill. Furthermore, the NHRI recommends

⁴ The Baseline Research on Child Protection in Samoa carried out in 2011 by Ministry of Women Community and Social Development in collaboration with UNICEF (United Nation International Children’s Emergency Fund).

⁵ Samoa Law Reform Commission Final Report ‘Child Care and Protection Legislation, February 2013 <http://www.samoalawreform.gov.ws/wp-content/uploads/2014/08/Child-Care-and-Protection-Legislation-Final-Report-Final.pdf> [accessed at 10 September 2015].

⁶ An Act relating to actions for damages on behalf of families of persons killed by accident

⁷ Samoa Law Reform Commission, Care and Protection Legislation to Protect Children, Issues Paper IP 03/09, December 2009, <http://www.samoalawreform.gov.ws/wp-content/uploads/2014/08/Care-and-Protection-Legislation-to-Protect-Children-Issues-Paper.pdf> [accessed 10 September 2015] p 11

⁸ Section 5 of the Bill states that any law which relates to the rights of children, or which provides for processes relevant to dealing with children in any context, must be read and applied subject to the provisions of the Act, and in the event of any inconsistency between the provisions of the Act and of any other law, the provisions of the Act prevail. This effectively brings the definition of ‘child’ in domestic legislation into conformity with the Convention

Samoan Government amend and present the Bill at the first session of Parliament after the next election in March 2016.

5 Data collection

19. The NHRI commends the government for the work it has begun in developing a comprehensive system of collecting disaggregated data for the purposes of human rights monitoring, including under the Convention. However, much more work needs to be done in this area. The NHRI encountered a lack of meaningful disaggregated data on the issue of incest and sexual abuse with regards to children when preparing its SHRR. The data made available by the Domestic Violence Unit (DVU) within the Ministry of Police was scant and insufficiently disaggregated. The NHRI had to rely on caseload data from the Non-Governmental Organisation (NGO), Samoa Victim Support Group (SVSG), relying on case files relating to victims of sexual abuse and incest.
20. The lack of information and statistical data regarding the high prevalence of violence and its nature, extent and causes is a major concern and contributes to lack of enforcement of child's rights in Samoa. It was particularly disconcerting that the data made available by the DVU was scant and insufficiently disaggregated. A government cannot claim to be dedicated to ending violence if its own police force does not take seriously the collection of statistical data on domestic and sexual violence disaggregated by sex, age, nationality and relationship between the victim and perpetrator. In its report, the SLRC also makes recommendations that institutions dealing with reports of violence against children need to record and report disaggregated data in relation to reports received and actions taken.⁹

Recommendation 3: That the Samoan Government ensures the Domestic Violence Unit (DVU) (and all institutions dealing with reports of violence against children) regularly collects statistical data on domestic and sexual violence disaggregated by sex, age, region (urban/rural), and relationship between victim and perpetrator.

6 General principles

6.1 *Non-discrimination and best interests of the child*

21. Since the Committee's last Concluding Observations on Samoa, the government undertook a number of reforms to ensure that the child's welfare is protected and that measures and laws implemented in Samoa are in line with principles of the Convention. In November 2008, the SLRC received a reference from Cabinet on the Care and Protection (Protection of Children) project (the Project). The Project commenced in February 2009 as an in-house Project focussing on:

⁹ Samoa Law Reform Commission Final Report 'Child Care and Protection Legislation, February 2013, pg 26.

- identifying legislation dealing with the care and protection of children in Samoa; and
 - the extent of Samoa's compliance with obligations under the Convention.
22. In 2011, the government, in collaboration with UNICEF, carried out a Baseline Research on Child Protection in Samoa which was to review domestic legislation against CRC indicators to determine the extent of the government's compliance with the obligations under the Convention. The legislative review revealed that the problems affecting child care and protection of children today are due to inadequate legislative protection and poor enforcement of existing legislation arising from the confusion and impracticality of not having consolidated legislation relating to child care protection.¹⁰ It was recommended in the final report by the SLRC that the enactment of new child care and protection legislation would facilitate compliance with the obligations under the Convention and make future child related law reform easier.
23. The Bill consolidates child care protection legislation and partially ensures that the government is meeting its obligations under the Convention and fills in some of the gaps in the current laws in relation to children to be in line with the Convention. For example, the Bill eliminates discrimination with regards to the minimum legal age for boys and girls to marry, making it 18 for both sexes.¹¹ The core principle for administering the Bill is that of the safety, well-being and that the best interests of the child is *paramount*. While it is commendable that the government has included a best interests principle in the Bill, the NHRI is concerned that having the best interests of the child as the *paramount* consideration is inconsistent with the Convention. In order to mirror the best interests principle under the Convention, the Bill should be amended to include that the best interests of the *child is a primary consideration*. The NHRI recognises that the ambit of the terminology "in all actions concerning children" in Article 1 of the Convention includes actions in which parties could have equal claims to have their interests considered.¹²
24. The Bill expands on the Ordinance with regards to the care and protection of children when under custody. The Bill takes *fa'asamoa* into consideration as it has been drafted with local culture and tradition in mind. However, where the rights of children come into conflict with *fa'asamoa*, the protection provisions of the Act prevail.¹³

See Recommendation 2

¹⁰ Samoa Law Reform Commission Final Report 'Child Care and Protection Legislation, February 2013, pg 8.

¹¹ Samoa's Constitution at Article 15 guarantees equal protection under the law to all persons (including children) and that there should be no discrimination against any person based on grounds only of descent, sex, language, religion, political or other opinion, social origin, place of birth, family status, or any of them.

¹² See UNICEF *Implementation Handbook for the Convention on the Rights of the Child* http://www.unicef.org/publications/index_43110.html [accessed at 4 September 2015] at 39

¹³ *Child Care and Protection Bill 2015*, s 4(2)

6.2 Respect for the views of the child

25. As mentioned above, the *Fa'asamoa*, or Samoan way of life, plays a pivotal role in the typical Samoan way of living and a seminal role in the upbringing of a child.
26. In reference to the misconceptions outlined in paragraphs 13 to 14, the community are reluctant to enforce human rights, and specifically child's rights, because they believe that human rights give the child the right to talk back to parents and misbehave. It is the traditional status of a Samoan child to listen and obey his/her parents without talking back. However, as is provided in Article 12 of the Convention, children have the rights to express their views in all matters affecting them.
27. It is the view of the NHRI that more work needs to be done in collaboration with relevant government Ministries and NGO's to dispel the misconceptions that surround children's rights, especially the child's right to be heard under Article 12 of the Convention.

See recommendation 1

7 Education

28. The NHRI welcomes efforts by the Samoan Government since the last periodic review in addressing the issue of reducing drop-out rates amongst compulsory school-aged children.
29. The Samoan Government, with assistance from the Australian and New Zealand governments, introduced the Samoa School Fee Grant Scheme (SSFSGS) which replaced school fees levied on children, parents and their guardians, with a government-administered grant scheme. This scheme has addressed some of the Committee's concerns in its 2006 Concluding Observations.¹⁴ For example, Samoa is on track to meet Millennium Goal No. 2 in achieving universal compulsory primary education with the national schooling participation rate for children aged 5-14 above 90% since 2005.¹⁵
30. Yet, Samoa currently has a reservation under Article 28 of the Convention. At the time of making the reservation, the government claimed that 'the greater portion of schools within Samoa that provide primary education are controlled by bodies outside the control of the government'. The bodies which the Government referred to are church schools and theological colleges which set their own tuition fees. However, the fees of these bodies now come under the

¹⁴ UN Committee on the Rights of the Child (CRC), *UN Committee on the Rights of the Child: Concluding Observations, Samoa*, 16 October 2006, CRC/C/WSM/CO/1, available at: <http://www.refworld.org/docid/45c30bc00.html> [accessed 7 September 2015]

¹⁵ <http://www.ws.undp.org/content/samoa/en/home/mdgoverview/overview/mdg2/> [accessed 2 September 2015]. See also s 4-5 of the *Education Act 2009* which ensures compulsory enrolment for children ages 5-14. Failure to enrol a child into school could result in the carer of the child receiving a maximum fine of \$5000 WST (\$1910 USD)

umbrella of the SSFGS, meaning that the Samoan Government's current reasoning for the reservation under Article 28 is redundant.

Recommendation 4: That the Samoan Government withdraws its current reservation under Article 28 of the Convention.

31. While the NHRI commends the Samoan Government for working with its regional neighbours in introducing the SSFGS and attempting to ensure primary education is compulsory for all, access to primary education is still restricted for some Samoan children as primary education cannot be said to be completely *free*.
32. While the SSFGS goes a long way in making primary education free by removing the need for parents and guardians of compulsory school aged children to pay school fees, the SSFGS does not address the government's responsibility of meeting the incidental costs of education. The grant scheme only provides for fee-free education, which covers tuition fees, books and stationary costs.¹⁶ It is the incidental costs of education such as uniforms, registration fees, transportation and lunches that prevent some children from attending school, especially in rural areas.
33. The Committee has previously made clear its dissatisfaction when states do not meet their obligation of providing all the costs for primary education, including incidental costs.¹⁷
34. Furthermore, in its *General Comment Number 11: Plan of Action for Primary Education*, the **Committee on Economic, Social and Cultural Rights** stated:

Fees imposed by the Government, the local authorities or the school, and other direct costs, constitute disincentives to the enjoyment of the right and may jeopardize its realization. They are also often highly regressive in effect. Their elimination is a matter which must be addressed by the required plan of action. Indirect costs, such as compulsory levies on parents (sometimes portrayed as being voluntary, when in fact they are not), or the obligation to wear a relatively expensive school uniform, can also fall into the same category.¹⁸

¹⁶ The SSFGS is currently funded by the Australian and New Zealand governments. The Samoan government is making efforts to fund the SSFGS in its national budgets in the future.

¹⁷ See UN Committee on the Rights of the Child (CRC), *UN Committee on the Rights of the Child: Concluding Observations, Colombia*, 8 June 2006, CRC/C/COL/CO/3, available at: <http://www.refworld.org/docid/45377ee30.html> [accessed 27 August 2015] at 76; UN Committee on the Rights of the Child (CRC), *UN Committee on the Rights of the Child: Concluding Observations: Myanmar*, 30 June 2004, CRC/C/15/Add.237, available at: <http://www.refworld.org/docid/42d3c0b24.html> [accessed 27 August 2015] at 62; UN Committee on the Rights of the Child (CRC), *UN Committee on the Rights of the Child: Concluding Observations: Nicaragua*, 21 September 2005, CRC/C/15/Add.265, available at: <http://www.refworld.org/docid/45377ea7e.html> [accessed 27 August 2015] at 57

¹⁸ UN Committee on Economic, Social and Cultural Rights (CESCR), *General Comment No. 11: Plans of Action for Primary Education (Art. 14 of the Covenant)*, 10 May 1999, E/1992/23, available at: <http://www.refworld.org/docid/4538838c0.html> [accessed 2 September 2015] at [7]

35. Therefore, the Samoan Government has a clear responsibility in providing primary education which is completely free, including reducing the amount of incidental costs that are associated with school-aged children attending school.

Recommendation 5: That the Samoan Government assist in reducing the incidental costs of education so that primary education in Samoa can be completely free.

36. Furthermore, the Government needs to address the increasing problem of declining participation rates for secondary school aged children. Participation rates for ages to 15-19 have remained below 60% since 2005¹⁹, with highest rates of drop-outs occurring during years 12 and 13.²⁰
37. The SSFGS was extended to secondary schools in August 2013. Like its primary school counterpart, the Secondary School Fee Grant Scheme seeks to improve the quality, access and retention of students by removing school fees for students in years 9-11 in 36 government and mission colleges in Samoa.²¹
38. The NHRI welcomes the government's SSFGS secondary school initiative which aims to increase the participation rate for years 9-13 to 85%.²² It also welcomes the Government's Technical, Educational and Vocational Training programmes in secondary schools as a way of enticing secondary school-aged children to remain in school.
39. According to the Government's Statistical Digest 2014²³, there has been an improvement in the participation rate between primary years 8 to secondary year 9 for the 2014 school year. According to the government this is directly attributable to the SSFGS. If this is the case then it is important that the Secondary School SSFGS also address the incidental costs of education if the Samoan Government is serious about raising the participation rate of secondary school aged children.

7.1 Children with disabilities - Education

40. Important efforts have been made in Samoa towards ensuring that policy settings are in place to allow equal access of persons with disability to education. The *Education Act 2009* provides that students with disabilities are not only included in compulsory primary education, but also receive *appropriate* education. The Chief Executive Officer (CEO) of the

¹⁹ It was reported 56% in 2014. Ministry of Education, Sport and Culture, Educational Statistical Digest 2014, available at http://mesc.gov.ws/pdf/Stats%20Digest%20Draft%202014_FINAL_Core.pdf [accessed 1 September 2015] at 11.

²⁰ Ibid.

²¹ MESC, 'Samoa School Fee Grant Scheme – Secondary' [1st Annual Report July 2013-2014] at page 5

²² Ibid page 7.

²³ http://www.mesc.gov.ws/index.php?option=com_content&view=article&id=90&Itemid=157 [accessed at 7 September 2015]

Ministry of Education, Sport and Culture (MESC) is required to establish policy or guidelines for schools to identify and assess students with disabilities and modify teaching programmes as necessary, including training in special education for teachers.²⁴

41. A guiding principle of MESC's strategic plan is to include disabled students in mainstream education.²⁵ It is commendable that Samoa has created legislation and policies that are in accordance with relevant international human rights standards and which seek to ensure that children with disabilities have access to education on equal footing with the rest of the school-aged population. This, combined with the Samoan Government's project with the Australian Government on the Samoa Inclusive Education Development Program (SIEDP) has seen a 54% increase in children with disabilities accessing schools since 2009.²⁶
42. The Samoan Government should supplement its efforts in supporting students with disabilities via public awareness activities aimed at parents and communities, as well as enhancing classroom support for teaching staff, supporting sign language and braille in schools and undertaking awareness raising for teachers on disabilities and human rights.
43. While legislation and government education policy has made significant strides with regards to inclusive education for children with disability, there is significant progress yet to be made in the implementation of these policies. Poor implementation of disability laws and policies are resulting in unequal access to education for students with disabilities.
44. In focus group discussions with the NHRI, parents of children with intellectual disabilities, reported that their children get insufficient attention and poor treatment from teachers, and in one extreme experience, abuse at the hands of their teachers.²⁷ They believed that this is due to a lack of specialised training for teachers to appropriately teach children with disabilities,²⁸ a problem that is also recognised by the Samoan Government²⁹.
45. Currently, there is limited capacity to provide fully inclusive education for students with specific needs despite the law requiring the government to do so. There is a serious gap in the capability of teachers to be well-equipped and properly trained to provide appropriate education to students with disabilities. While the law does not exclude students with disabilities from the general education system, this does not mean that children with disabilities enjoy access to inclusive, quality and free education in Samoa. Having the

²⁴ *Education Act 2009*, s 60(c) and 61

²⁵ Education Sector Plan (July 2013 – June 2018),

http://www.mesc.gov.ws/pdf/Education%20Sector%20Plan%202013_2018%20English%20version.pdf [accessed 10 September 2015], p29

²⁶ SSD p53 or Ministry of Finance (MOF), Economic Policy and Planning Division, *Strategy for the Development of Samoa 2012-2016*, available at: <http://www.adb.org/sites/default/files/linked-documents/cobp-sam-2015-2017-sd-01.pdf> [accessed 25 June 2014].

²⁷ Consultations with parents of children with intellectual disabilities located on file at the NHRI

²⁸ Ibid

²⁹ MESC, *Education Sector Plan (July 2013 – June 2018)* See note 25.

legislative and policy instruments for inclusive education is one thing, having the capacity and resources to implement them is another.

46. The NHRI recognises that it takes time to implement a broad, nation-wide inclusive education system that seeks to meet the needs of all children, including those with disabilities. It therefore encourages the government to continue its efforts in addressing the educational needs of children with disabilities

Recommendation 6: That the Samoan Government continue to implement its National Policy on Disability as well as increase disability training for teachers in government schools.

8 Family planning and sexuality education for children and youth

47. Samoa has taken steps to establish sexual and reproductive health programs for Samoa's children and youth as explained in the Government's response to the Committee's recommendation 21 in its last Concluding Observations for Samoa. However, most sexual and reproductive health programmes ignore the social, cultural and economic factors that prevent young people from making healthy decisions and contribute to their vulnerability to poor sexual and reproductive health outcomes, such as exposure to human immunodeficiency virus (HIV) and sexually transmitted infections (STIs), sexual violence and undesired or unsafe pregnancy. The NHRI believes that this amounts to a breach of Article 24 of the Convention.

8.1 Comprehensive sexuality education

48. A common misconception exists in Samoa that comprehensive sexuality education (CSE) and access to condoms encourage premarital sex.³⁰ Indeed, CSE, delivered in the context of religious and social norms, can in fact prevent premarital sex by providing youth with a full understanding of the consequences of their actions.³¹ In the event that youths decide to engage in premarital sex, CSE equips them with the knowledge and contraception to prevent adverse consequences for their health and future.
49. In its General Comment on adolescent health and development of the child, the Committee stated that in light of Articles 3, 17 and 24 of the Convention, the State bears the onus of providing adolescents with access to sexual and reproductive information, including family planning and contraceptives, the

³⁰Input from focus group discussions with church leaders on file with the Office of the Ombudsman.

³¹UN General Assembly, *Report of the Ad Hoc Committee of the Whole of the Twenty-first Special Session of the General Assembly: Key actions for the further implementation of the Programme of Action of the International Conference on Population and Development*, 1 July 1999, A/S-21/5/Add.1, available at: <http://www.un.org/popin/unpopcom/32ndsess/gass/215a1e.pdf> [accessed 4 September 2015] at para 73(e).

dangers of early pregnancy, the prevention and treatment of sexually transmitted infections (STI's), including HIV/AIDS.³²

50. In a 2012 attitudinal survey carried out in primary and secondary schools focusing on principals, teachers, parents, and students, the majority supported CSE but emphasised the need for teachers to be well trained and equipped with educational materials.³³ The United Nations Population Fund (UNFPA)'s Operational Guidance for CSE provides an excellent framework which the Government should consider adopting to guide the inclusion of CSE in the school curriculum.

Recommendation 7: That the Samoan Government to engage with UN partners to implement CSE in accordance with UNFPA's Operational Guidance in order to empower young people to protect their health, wellbeing and dignity.

8.2 Access to contraception

51. According to the Secretariat of the Pacific Community (SPC), Samoa has the highest prevalence of STIs in the Pacific Region coupled with one of the lowest CPRs.³⁴ The Second Generation Surveillance Survey 2008— corroborated by Samoa's Demographic Health Survey 2009—revealed an extremely high prevalence of chlamydia, particularly for youth under 25 at 71%.³⁵ Commendably, the Government provides treatment for STIs free of charge at public clinics. However, due to the taboo nature of the issue and the harsh judgment by health professionals (particularly towards youth), use of such services are not widely used by Samoa's adolescent youth.
52. Access to contraception in Samoa is inhibited by cultural and religious views regarding extra-marital sex. Samoa's contraceptive prevalence rate (CPR) is 17.8% for any contraceptive method among currently married women aged 15 to 49.³⁶ Condom use rates in Samoa are generally low, mostly due to the lack of awareness and access, as well as a lack of acceptance of condom use

³² UN Committee on the Rights of the Child (CRC), *General comment No. 4 (2003): Adolescent Health and Development in the Context of the Convention on the Rights of the Child*, 1 July 2003, CRC/GC/2003/4, available at: <http://www.refworld.org/docid/4538834f0.html> [accessed 31 August 2015] at para 28; See also United Nations General Assembly, *Key actions for the further implementation of the Programme of Action of the International Conference on Population and Development*, A/RES/S-21, 8 Nov. 1999, para. 35(b).

³³ UNESCO, *Attitudinal Survey Report on the delivery of HIV and Sexuality Reproductive Health Education*, UNESCO Apia Office for Pacific States, at 23.

³⁴ See e.g. SPC, *Sexual and Reproductive Health and Right in the Pacific*, (2015) available at: file:///C:/Users/User/Downloads/SRHR_manual_FINAL30May2015.pdf.

³⁵ Ministry Of Health and Samoa Bureau of Statistics, *Demographic and Health SurveyS Final Report 2009*, available at: <http://dhsprogram.com/publications/publication-fr240-dhs-final-reports.cfm> [accessed 5 June 2015].

³⁶ Ministry of Health and Samoa Bureau of Statistics, *Demographic and Health Survey Final Report 2009*, available at: <http://dhsprogram.com/publications/publication-fr240-dhs-final-reports.cfm> [accessed 5 June 2015]. NB: in Samoa CPR is only measured for married women.

among religious leaders.³⁷ Family health workers often judge young women seeking contraception, procedures to obtain a prescription can be complex and as a result young women are often denied access to birth control.³⁸ Further, perceptions that youth should not use condoms are prevalent³⁹ which also inhibits youth from accessing this form of contraception.

53. The Survey found that 60% of participant's and 73% of village leaders (particularly rural women leaders) agreed that there should be better access to birth control for both men and women. Efforts should be made to improve access, and address the factors which inhibit youth from accessing contraception.

Recommendation 8: The Samoan Government, in consultation with the NHRI, UNFPA and UNAIDS, should launch comprehensive public health campaigns around safe sex, in particular addressing increased understanding and acceptance of condom and contraceptive use at political, religious and traditional leadership levels.

8.3 Teenage pregnancy

54. According to the Government, the adolescent birth rate is 39 births per 1000 women aged 15 to 19.⁴⁰ Approximately 1 in every 25 babies born in Samoa is born to a mother aged 15 – 19⁴¹ and the rates of teen pregnancy are increasing.⁴² In 2014, the Samoa Family Health Association (SFHA)⁴³ reported that it provided services to 19 patients under the age of 17 during pregnancy, all of whom sought alternatives to bringing the pregnancy to full term.⁴⁴
55. The (SVSG) also voiced concerns around unwanted pregnancy and the risks girls take in hiding pregnancies from families for fear of being banished or beaten.⁴⁵ Indeed, there have been documented cases of attempted suicide by young mothers afraid that their families would not accept their pregnancy.⁴⁶ Inadequate settings to address teen pregnancy can also be harmful to the teen's child with anecdotal evidence of unwanted babies being

³⁷ Notes from church consultations with the NHRI and results of church Surveys. Located on file at the NHRI

³⁸ Input from anonymous Survey participant on file with the NHRI.

³⁹ Input from anonymous Survey participant on file with the NHRI.

⁴⁰ Data request on Women's Health, correspondence with the Ministry of Health, source National Census Report (2011). Although it was also reported at 44 per 1000 for women aged 15 to 19 years via the Demographic Health Survey (DHS) 2009.

⁴¹ Samoa Bureau of Statistics (SBS), Population and Housing Census 2011 Analytical Report (2011 Census) at VI.

⁴² UNICEF, *A situational analysis of children, women and youth*, available at: http://www.unicef.org/pacificislands/Samoa_sitan.pdf [accessed 25 June 2015] at 71.

⁴³ Samoa Family Health Association (SFHA) is a non-governmental organisation that provides invaluable sexual and reproductive health services to families in Samoa.

⁴⁴ SFHA, Data Request on file at the NHRI

⁴⁵ Consultation notes from SVSG, 1 May 2015, on file at the NHRI.

⁴⁶ *Ibid.*

abandoned in sewers or empty lots.⁴⁷ There is a serious need to publically address this issue. Prevention through improved access to contraception and CSE is the first means by which teen pregnancy can be addressed. Support needs to be given to young mothers during pregnancy, in order to reduce the teen mothers being ostracised from their friends and family.

Recommendation 9: To promote attitudinal change in the community, the Samoan Government should expand its Mothers and Daughters programme to become nationwide and consider a similar programme for fathers and sons in order to combat negative social and cultural attitudes towards teenage pregnancy.

8.4 Abortion

56. Under the *Crimes Act 2013*, abortion is illegal in Samoa except in cases where the physician believes that continuing of the pregnancy would result in serious danger to the life or to the physical or mental health of the girl.⁴⁸ Currently, the law does not provide for exceptions in cases of rape, incest or for minors. Existing prohibitions lead women and girls to seek unsafe, illegal abortions.⁴⁹ These policy and legislative settings must be reviewed to take proper account of the risks imposed and which are being borne by vulnerable girls who are victims of unlawful sexual acts.
57. A further issue here is that Samoa's failure to adequately implement Article 24 of the Convention is infringing the rights of pregnant teens under Article 28 – the right to education. A survey conducted by the NHRI for the SHRR uncovered the issue of pregnant girls being expelled or prevented from attending school as result of pressure to drop-out in order to care for their child.⁵⁰ The denial of education for pregnant girls is a form of gender discrimination as often it is only the girl that bears the responsibility of looking after the child. The father does not face the same pressure to drop out of school during and after the pregnancy. There is a need to foster a culture of acceptance of pregnant students amongst teachers and students, and encourage pregnant girls to remain in school, or provide alternative options for them to continue their schooling while pregnant as well as after childbirth.

Recommendation 10: The Samoan Government should foster improved teacher and student acceptance of pregnant students, and encourage

⁴⁷ *Ibid.*

⁴⁸ *Crimes Act 2013*, s. 116. Allowable up until 20 weeks gestation.

⁴⁹ CEDAW Committee, *Statement of the Committee on the Elimination of Discrimination against Women on sexual and reproductive health and rights: Beyond 2014 ICPD review*, 57th session, available at: <http://www.ohchr.org/Documents/HRBodies/CEDAW/Statements/SRHR26Feb2014.pdf> [accessed 31 August 2015] at 2.

⁵⁰ Input from anonymous Survey participants on file with the NHRI; See also e.g. Letter to the Editor, Samoa Observer, available at: <http://www.samoaoobserver.ws/opinions/letters-to-the-editor/12270-teenage-pregnancy-a-social-challenge> [accessed 24 February 2015] at 15 and Lani Wendt Young, "Lets Punish Pregnant Teenagers in Samoa" <http://laniwendtyoung.me/uncategorized/l ets-punish-pregnant-teenagers-in-samoa/> [accessed 24 February 2015]

pregnant girls to remain in school or provide alternative options for them to continue their schooling while pregnant as well as once they become mothers through an outreach and education campaign.

9 Child abuse

9.1 Corporal punishment within the family and village

58. Samoa is not meeting its obligations under Article 19 of the Convention as it fails to prohibit all forms of corporal punishment in the family and community.
59. Hitting a child is a common form of physical punishment in Samoa. The norm of hitting children makes it difficult to distinguish between discipline and abuse.⁵¹ Children and parents often accept violent punishment as unacceptable form of discipline, not realising it amounts to abuse. Indeed, the SLRC has outlined a number of court cases where children have died at the hands of parents administering corporal punishment.⁵²
60. The matter of corporal punishment in the family is currently addressed under the *Infant Ordinance Act 1961*. This Act defines wilful ill-treatment of a child likely to cause unnecessary suffering or injury as an offence punishable by fine or imprisonment.⁵³ However, the Act does not define what constitutes “unnecessary suffering or injury”. Further, section 14 of the Act recognises the rights of parents and other caretakers to administer ‘reasonable punishment’ to a child under their care without defining what is reasonable.⁵⁴ The current draft of the *Child Care and Protection Bill*, designed to update Samoa’s law to implement the Convention, does not address this issue. SLRC final report on the *Bill* recommended that the issue should first be addressed through awareness and training programmes prior to legislating against corporal punishment in homes.⁵⁵
61. It is apparent that corporal punishment by a family member or other caregiver is still a regular occurrence in Samoa. The findings of the Government’s *Child Protection Baseline Report for Samoa 2013* found that an overwhelming majority (77%) of caregivers surveyed used physical (corporal) punishment and over half (51.4%) of children surveyed experienced physical punishment

⁵¹UNICEF, *A situational analysis of children, women and youth*, available at: http://www.unicef.org/pacificislands/Samoa_sitan.pdf [accessed 25 June 2015] at 43.

⁵²SLRC, *Child Protection Legislation Report 2013*, available at: <http://www.samoalawreform.gov.ws/wp-content/uploads/2014/08/Care-and-Protection-Legislation-to-Protect-Children-Issues-Paper.pdf> [accessed 25 June 2015] at 9-10.

⁵³*Infant Ordinance Act 1961*, s. 12.

⁵⁴SLRC, *Child Protection Legislation Report 2013*, available at: <http://www.samoalawreform.gov.ws/wp-content/uploads/2014/08/Care-and-Protection-Legislation-to-Protect-Children-Issues-Paper.pdf> [accessed 25 June 2015] at 13.

⁵⁵SLRC, *CHILD CARE AND PROTECTION LEGISLATION: Final Report 11/13*, available at: <http://www.samoalawreform.gov.ws/wp-content/uploads/2014/08/Child-Care-and-Protection-Legislation-Final-Report-Final.pdf> [accessed 28 August 2015] at 57.

in the previous year.⁵⁶ The most common types of physical violence were hitting, smacking, and slapping and the most common implements for hitting were hands and sticks.⁵⁷

62. In village focus group discussions conducted by the NHRI for the SHRR, participants often vehemently discussed the rights of parents to physically discipline a child in whatever form they chose because it is viewed as an effective method of discipline that has been used over the generations to correct inappropriate behaviour and train children.⁵⁸ It is seen as a practice consistent with the *Fa'asamoa*.⁵⁹ Further, child rearing in Samoa is strongly influenced by Christian practices and values.⁶⁰ Thus, if the child does disobey the parents or elders, it is common that they are physically and verbally disciplined.
63. Despite the high incidence of corporal punishment, the Samoan government found that only 0.2% of respondents to their fieldwork on child protection⁶¹ consider corporal punishment to be an effective way to discipline a child. Instead, positive discipline techniques such as good communication between parent and child were considered to be the best way to discipline children.⁶² As such, educating families on positive discipline techniques should lead to acceptance of this as an alternative to corporal punishment.⁶³

Recommendation 11: Corporal punishment in the family and community should be addressed both through awareness raising and legislative reform: The Samoan Government should be supported in their continued efforts to advocate for zero tolerance of corporal punishment at the village level⁶⁴ combined with further awareness-raising activities.

⁵⁶ Ministry of Women Child Social Development, *Child Protection Baseline 2013*, available at: <http://www.mwcsd.gov.ws/images/stories/division-for-women/2014/child%20protection/Samoa%20baseline%2027Nov.pdf> [accessed 25 June 2015] at 10 and 17.

⁵⁷ *Ibid*, at 18.

⁵⁸ This is viewed not only for 'stopping cheeky behaviour' but also for teaching wrong from right, particularly as laid out in Proverbs 22:6, "Train up a child in the way he should go, and when he is old he will not depart from it."

⁵⁹ Input from qualitative responses to school Survey located on file at the NHRI.

⁶⁰ For example, many village participants paraphrased Proverbs 13:24, "Spare the rod, spoil the child."

⁶¹ Adults, children and community and church leaders; Ministry of Women Community and Social Development "Child Protection Baseline Report for Samoa 2013" <http://www.mwcsd.gov.ws/images/stories/division-for-women/2014/child%20protection/Samoa%20baseline%2027Nov.pdf> [accessed 3 September 2015]

p18

⁶² SLRC, *Child Protection Legislation Report 2013*, available at: <http://www.samoalawreform.gov.ws/wp-content/uploads/2014/08/Care-and-Protection-Legislation-to-Protect-Children-Issues-Paper.pdf> [accessed 25 June 2015] at 19

⁶³ *Ibid* at 18

⁶⁴ Ministry of Women Community and Social Development, *Consolidated Second, Third and Fourth Periodic Report on the Implementation of the Convention on the Rights of the Child*, available at: <http://www.mwcsd.gov.ws/images/stories/PUBLICATIONS%20WEBSITE/2014/CRC%20Report%202013/1.CRC%20Second%20periodic%20report%20FINAL.pdf> [accessed 25 June 2015].

9.2 Child abuse, including sexual abuse and incest

64. Samoa has failed to implement the Committee's recommendations 42 and 43 from the Committee's Concluding Observations, and therefore cannot be said to be meeting its obligations under Articles 19 and 34(a) of the Convention. This is because current legislation does not fully address all aspects of child protection and because there is inadequate implementation of existing protection and reporting legislation.
65. Over one-third (34%) of respondents to the Survey witnessed domestic abuse against a child in the past year, although the rate of abuse is likely higher as many village participants did not view excessive discipline of children as a child abuse issue.⁶⁵ Further, school children's responses to the Survey indicated that child abuse is common in villages⁶⁶. In terms of verbal abuse, almost half (46%) of adults surveyed by the Government have had a child within their household talk to them about being called an inappropriate name by an adult within that household.⁶⁷ The majority of names consist of general swearing following by the words "stupid" or "lazy."⁶⁸ Almost three-quarters (74%) of children indicated that this made them feel angry, sad, unsure, uncomfortable or scared.⁶⁹ This was corroborated by the Survey where a number of school children indicated that physical and verbal abuse causes depression and trauma for children.⁷⁰
66. Sexual abuse and incest is a crime under national law.⁷¹ It is also condemned within *Fa'asamoa*.⁷² Despite being forbidden within the law and culture, this is an issue that persists and the NHRI is concerned that it is becoming increasingly common, particularly given the lack of information and statistical data on its nature, extent, causes. The NHRI's SHRR research uncovered the occurrence of sexual abuse and incest (despite not directly asking survey participants about this issue).⁷³ This is corroborated by Police and Court records indicating a "relatively high number of offences of incest and sexual

⁶⁵ The Survey defined abuse as treatment of a person with physical or emotional cruelty or violence, especially regularly or repeatedly.

⁶⁶ It is unclear if the abuse they are experiencing is being described as occurring at home or within the school or both.

⁶⁷ SLRC, *Child Protection Legislation Report 2013*, available at: <http://www.samoalawreform.gov.ws/wp-content/uploads/2014/08/Care-and-Protection-Legislation-to-Protect-Children-Issues-Paper.pdf> [accessed 25 June 2015] at 18.

⁶⁸ Ibid at 18.

⁶⁹ Ibid at 17.

⁷⁰ Input from qualitative responses to schools Survey on file at the NHRI.

⁷¹ *Crimes Act 2013*, s. 55.

⁷² UNICEF, *A situational analysis of children, women and youth*, available at: http://www.unicef.org/pacificislands/Samoa_sitan.pdf [accessed 25 June 2015] at 8.

⁷³ Qualitative survey data – villages and schools.

offences affecting children.⁷⁴ Since the establishment of the House of Hope, SVSG has housed over 100 children who have been victims of incest.⁷⁵

67. It is likely that incest is much more widespread. However, it often goes unreported due to its taboo nature and the fear and shame that is felt by victims.⁷⁶ Looking at the broader issue of violence against women and girls, the Survey found that only 25% of participants who had witnessed such violence reported it. In Samoa, the issue of family reputation plays a role in underreporting, which can silence the victim and protect the perpetrator.⁷⁷ Indeed, anecdotal evidence suggests that where reporting of such issues goes through the village *fono* (village council) the result may be action against the person or family reporting rather than against the perpetrator.⁷⁸
68. The Survey indicated that young children are not aware of where to report child abuse or incest,⁷⁹ which indicates a lack of awareness of the laws already in place to support victims. For example, the *Family Safety Act 2013* (FSA) issues protection orders from perpetrators of domestic violence, including in instances of sexual abuse and incest, but there is limited public knowledge of this law with victims of domestic violence often unaware of how to seek protection under the FSA. Further, while the FSA provides for protection orders for victims, it does not protect those who report abuse but who are not victims themselves. The NHRI's focus group consultations for the SHRR found this contributes to the low rates of reporting of domestic violence.
69. Another aspect is the inadequate structures in place to support victims of domestic violence, sexual assault and incest. There is currently only one NGO – SVSG – that offers assistance in such cases and they are severely under-resourced to provide the requisite level of support, counselling services and shelter that is needed. Nevertheless, SVSG provides significant support thanks to dedicated volunteers and staff constantly going above and beyond the course of duty.⁸⁰

Recommendation 12: That the Samoan Government support SVSG so that it can adequately provide counselling and support services for victims of sexual assault, domestic violence and incest. However, the responsibility for providing such services falls directly within the role of the state. The Samoan Government should allocate resources from its annual budget to adequately perform this role, either to be provided directly to SVSG to enhance its services to meet the high demand or to establish a public counselling clinic for victims of such abuse.

⁷⁴SLRC, *Child Protection Legislation Report 2013*, available at: <http://www.samoalawreform.gov.ws/wp-content/uploads/2014/08/Care-and-Protection-Legislation-to-Protect-Children-Issues-Paper.pdf> [accessed 25 June 2015] 68.

⁷⁵SVSG Consultation with the NHRI, 1 May 2015

⁷⁶Thacker, Devon G. "Incest." *Encyclopedia of Victimology and Crime Prevention*. Ed. Bonnie S. Fisher, and Steven P. Lab. Thousand Oaks, CA: SAGE Publications, Inc., 2010. 475-77.SAGE knowledge. Web. 16 Apr. 2015.

⁷⁷SVSG Consultation with the NHRI, 1 May 2015.

⁷⁸*Ibid.*

⁷⁹From qualitative responses to schools Survey located on file at the NHRI.

⁸⁰Interview with Lina Chang, SVSG, 1 May 2015

70. A further issue is the lack of information and statistical data regarding the prevalence, nature, extent and causes of violence.⁸¹ This also contributes to the lack of enforcement. The NHRI found it particularly disconcerting that the data made available by the DVU of the (MOP for our SHRR was scant and insufficiently disaggregated.⁸² A more systematic analysis of domestic violence against children, including sexual abuse and incest is necessary⁸³ and relevant authorities must commit to regular collection and reporting of disaggregated data on these matters.⁸⁴

Recommendation 13: The Samoan Government, in consultation with the NHRI, should work with the village *fono*, relevant authorities and relevant NGOs to increase public awareness of the *FSA* and how to engage in its legal proceedings.

Recommendation 14: The NHRI should work with the Samoan Government to investigate and develop child-friendly reporting avenues for child abuse, sexual assault and incest.

Recommendation 15: The Samoan Government, in consultation with the NHRI, should establish a system for the regular collection of statistical data on domestic violence, sexual abuse and incest disaggregated by sex, age, region (urban/rural), and relationship between victim and perpetrator to be reported on a quarterly basis to the NHRI.

Recommendation 16: The Samoan Government should provide dedicated funds and adequate assistance to all NGOs working on the protection of families, especially in rural areas.

Recommendation 17: That the Samoan Government review the *Family Safety Act 2013* for the inclusion of protections for persons who report incidence of violence, including sexual violence.

⁸¹United Nations (UN) Committee on the Elimination of Discrimination against Women (CEDAW), *Concluding Observations of the Committee on the Elimination of Discrimination against Women: Samoa*, 7 August 2012, CEDAW/C/WSM/CO/4-5, available at <http://daccess-dds-ny.un.org/doc/> [accessed 29 May 2015] para. 22.

⁸²Despite several attempts, the NHRI was unable to obtain any meaningfully disaggregated data on domestic violence from the Domestic Violence Unit (DVU). Instead, we opted to use data and insight from Samoa Victims Support Group (SVSG) on this issue, particularly considering they are most often used to resolve problems related to violence against women and children.

⁸³The Government found that 1.7% of children in their Survey had experienced inappropriate touching at home or in the community and 3.3% of adult respondents had been informed by a child in their household that they had been touched inappropriately. However, these statistics do not match the incidence of anonymous reporting, or the experiences of SVSG and only go to demonstrate the insufficient and inaccurate reporting on this issue.

⁸⁴ National Policy for Children in Samoa 2010-2015, available at: <http://www.mwcsd.gov.ws/index.php/publications/66-national-policy-for-children-in-samoa-2010-2015-summary> - [accessed 26 June 2015] at 9; See note 44 at 29.

9.3 Abuse within schools

71. The Samoan Government has yet to implement recommendations 42 and 43 from the last periodic review and, as such, cannot be said to be meeting the obligations under Articles 19 and 34(a) of the Convention.
72. The *Education Act 2009* bans the use of corporal punishment.⁸⁵ Further, the government prepared the “Behaviour Management Guidelines: A Guide for Schools – improving student behaviour and welfare” to detail and promote positive discipline techniques and implement procedures for breach of the guidelines.⁸⁶ However, the Public Service Commission (PSC) Report 2013 on corporal punishment in schools demonstrated that most teachers are unaware of alternative methods for disciplining children and do not believe that the governments guidelines are necessary.⁸⁷
73. Almost one-fifth (18%) of respondents to the Survey witnessed or experienced corporal punishment in schools within the past year and many students indicated that corporal punishment persists and asked teachers to stop this practice. In the Government’s Child Protection Baseline Report, 41% of children surveyed indicated a teacher had physically hurt them in the past year.⁸⁸ Despite the fact that policies are in place to address corporal punishment in schools, the issue still exists. Thus, there is a need to implement a monitoring and reporting system to accompany the already established policies to ensure their enforcement.⁸⁹
74. The NHRI wishes to highlight that the government is preparing a National Schools Violence-Free Policy that will address all forms of violence and discrimination in schools. If endorsed, this policy will cover bullying, discrimination against pregnant students, abuse (including sexual abuse), and other related forms of violence.⁹⁰ It is also intended to have a monitoring and evaluation system to enforce the corporal punishment ban. This is a positive initiative and the NHRI will work closely with Government to advocate for its establishment.

Recommendation 18: That the Samoan Government enforce the ban on corporal punishment in schools, in line with the *Education Act 2009* and the Convention

⁸⁵ *Education Act 2009*, s 23.

⁸⁶ SLRC, *Child Protection Legislation Report 2013*, available at: <http://www.samoalawreform.gov.ws/wp-content/uploads/2014/08/Care-and-Protection-Legislation-to-Protect-Children-Issues-Paper.pdf> [accessed 25 June 2015] at 32.

⁸⁷ Public Service Commission (PSC), Annual Report 2013, available at: <http://www.parliament.gov.ws/new/wp-content/uploads//05.Annual%20Reports/PSC/PSC-Annual-Report-2012-2013-En.pdf> . Currently, an Australian Child Protection Consultant is working with the Government to develop the National Safe Schools Policy and corresponding implementation plan.

⁸⁸ SLRC, *Child Protection Legislation Report 2013*, available at: <http://www.samoalawreform.gov.ws/wp-content/uploads/2014/08/Care-and-Protection-Legislation-to-Protect-Children-Issues-Paper.pdf> [accessed 25 June 2015] at 18.

⁸⁹ *Ibid.* at 32.

⁹⁰ MESC Consultation with the NHRI, 8 June 2015.

10 Economic exploitation

75. Samoa has achieved many of the recommendations relating to economic exploitation of children since its last CRC periodic review in 2006. For instance, it passed the *Education Act 2009*, which regulates the employment of school-aged children; it became a member of the International Labour Organization (ILO); and it ratified all 8 fundamental ILO Conventions, including the Worst Forms of Child Labour.⁹¹
76. Furthermore, Samoa advanced its efforts in eliminating the worst forms of child labour when it enacted the *Labour and Employment Relations Act 2013*. The passing of the Act ensured that the minimum age for hazardous work was raised to 18. Also, in order to ensure that there is effective implementation of this provision, The Samoan Government has begun developing a list of hazardous occupations in which children under the age of 18 must not be employed (e.g. work that includes the use of pesticides, asbestos etc.).
77. However, a common issue the Survey identified is the need to address the issue of children street vendors. According to the *Education Act 2009*, compulsory school aged children⁹² are not to engage in street trading, or any other work of any kind, during school hours.⁹³ Further, the Act sets up enforcement measures through the 'attendance officers' comprised of *Sui o Nuu* (village representative), school committees, and police officers.⁹⁴ Despite these strong measures to combat this form of child labour, enforcement is weak and children are still seen engaging in street vending during school hours.⁹⁵ The issue here is to unpack why child street vending is still a challenge despite the regulatory efforts to prevent it.
78. Article 32 of the Convention provides that a child has the right to be protected from economic exploitation that can interfere with the child's education. Child labour is largely driven by vulnerabilities caused by poverty and deprivation.⁹⁶ When children are unable to go to school because they are forced by their families to sell goods, they lose out on the ability to improve their future prospects and it continues the cycle of poverty. A significant emotional and mental burden is placed upon children when they take on financial

⁹¹ The eight fundamental Conventions of the ILO are Freedom of Association and Protection of the Right to Organise Convention, Right to Organise and Collective Bargaining Convention, Forced Labour Convention, Abolition of Forced Labour Convention, Minimum Age Convention, Worst Forms of Child Labour Convention, Equal Remuneration Convention and Discrimination (Employment and Occupation) Convention. Entry into force: 19 Nov 2000; <http://www.ilo.org/global/standards/introduction-to-international-labour-standards/conventions-and-recommendations/lang--en/index.htm>.

⁹² *Education Act 2009*, s 20 (applies to children between ages 5 and 14).

⁹³ *Education Act 2009*, s 20. This extends to any other time if the work prevents or interferes with the child's attendance or participation in school.

⁹⁴ *Education Act 2009*, s 15 to 16.

⁹⁵ UNICEF, *A situational analysis of children, women and youth*, available at: http://www.unicef.org/pacificislands/Samoa_sitan.pdf [accessed 25 June 2015] at 45.

⁹⁶ UNICEF, *Child Labour and UNICEF in Action: Children at the Centre*, available at: http://www.unicef.org/protection/files/Child_Labour_and_UNICEF_in_Action.pdf [accessed 15 June 2015] at 9.

responsibilities for their families' livelihoods—sometimes as the sole breadwinner—as was the case for half⁹⁷ of the child vendors profiled in the government's *Child Vendor's Pilot Study 2005*.⁹⁸ Thus, the NHRI recognises the potential of education to break intergenerational cycles of poverty. In conjunction with better enforcement of the *Education Act 2009*, the Government needs to deal with the broader issue of poverty⁹⁹ and ensure that families are empowered to choose education over exploitative labour for their children.

Recommendation 19: That the Samoan Government ensure enforcement of the *Education Act 2009* as to reduce the amount of school-aged children working as street vendors.

11 Juvenile justice

79. The discussion on juvenile justice takes place at a time of transition and change within the Samoan justice system. The separation of the Ministry of Police and Prisons occurred on 1st January 2015, creating a Ministry of Police and Samoa Prisons and Correction Services. Additionally, both agencies have had new Commissioners appointed within the past 18 months and advanced plans have been made to replace the main Tafaigata prison in 2016 with a facility at Tanumalala. The NHRI is aware of a range of planned initiatives and anticipates a concerted focus on juvenile justice, particularly concerning juvenile detention in the coming reporting period. It is important that all of these developments are undertaken with the requirements of the Convention, the United Nations Standard Minimum Rules for the Treatment of Prisoners (Standard Minimum Rules), UN Rules for the Protection of Juveniles Deprived of their Liberty (Havana Rules), the *United Nations* Standard Minimum Rules for the Administration of Juvenile Justice (Beijing Rules), *United Nations* Rules for the Treatment of Female Prisoners and Non-Custodial Measures for Women Offenders (Bangkok Rules).
80. The NHRI commends the Samoan Government for the enactment of the *Prisons and Corrections Act 2013*, which includes special procedures for the admission into custody of persons aged 18 or younger¹⁰⁰ and to ensure that those persons are treated in accordance with the Convention.¹⁰¹ Additionally, the Act specifies the need for classification of prisoners¹⁰², the right to basic

⁹⁷ This figure refers to 5 out of the 10 total children that were profiled.

⁹⁸ UNICEF, *A situational analysis of children, women and youth*, available at: http://www.unicef.org/pacificislands/Samoa_sitan.pdf [accessed 25 June 2015] at 59.

⁹⁹ UNICEF, *Child Labour and UNICEF in Action: Children at the Centre*, available at: http://www.unicef.org/protection/files/Child_Labour_and_UNICEF_in_Action.pdf [accessed 15 June 2015] at 9. This entails addressing social and economic disparities through social protections such as livelihoods assistance and access to social services.

¹⁰⁰ *Prisons and Corrections Act 2013*. s 28 (1)(b),

¹⁰¹ s 27 (6)(b)

¹⁰² s 39 (b)(ii), provided for in more detail by the Prisons and Corrections Regulations 2014, part 6

education for young prisoners on remand or held in detention¹⁰³, and rules concerning labour.¹⁰⁴

81. The NHRI further commends the establishment of the Youth Court as a special division of the District Court under the *Youth Offenders Act 2007*. The Youth Court has already heard a number of cases, many of an extremely sensitive nature.¹⁰⁵ The NHRI will monitor decisions taken by the Youth Court and look to offer future training for judicial officers in applying relevant human rights standards in the administration of juvenile justice.
82. Whilst it must be recognised that significant steps have already been taken to legislate for juvenile justice standards as per the Committee's recommendation in its last Concluding Observations¹⁰⁶, several areas of concern remain which demonstrate that the government is not upholding its obligations under Articles 37 (b), 39 and 40 of the Convention. The NHRI has collected information in relation to this through its monitoring of places of detention function and in the course of a number of investigations.
83. The Government should be commended for establishing an independent monitoring mechanism for places of detention through the enactment of the *Ombudsman Act 2013*.¹⁰⁷
84. After receiving technical assistance from the Asia Pacific Forum for National Human Rights Institutions, the New Zealand Commonwealth Ombudsman's Office and the Pacific Ombudsman's Alliance, the NHRI conducted its first set of inspections of places of detention in Samoa In January 2015. The inspections identified a number of concerns relating to the implementation of articles 37 (b), 39 and 40 of the Convention and the standards referenced in recommendation 59 in the Committee's last periodic report. The main areas of concern related to classification, health and hygiene, labour and education and rehabilitation. The report findings also highlight that full implementation of the *Prisons and Corrections Act 2013* has yet to be achieved.¹⁰⁸
85. The program of inspections included a visit to Oloamanu Juvenile Centre, Samoa's only juvenile detention facility, located at Mulifanua, Upolu. However, the facility holds detainees up to the age of 26 years old and on the day of the visit the total number of inmates was 23, all male. A number of concerns were observed:
 - Staff sharing accommodation with inmates;

¹⁰³ s 60 (2)(e)(v), Ibid

¹⁰⁴ s 47(1)(c)

¹⁰⁵ A number of the decisions can be found at <http://www.paclii.org/ws/cases/WSYC/>[accessed 4 September 2015]

¹⁰⁶ See recommendation 59 of the Committee's Concluding Observations.

¹⁰⁷ Section 33 (e) of the Ombudsman Act 2013 requires the NHRI 'to visit all public and, subject to section 48, private places of voluntary and involuntary confinement or detention'.

¹⁰⁸ Full findings and recommendations can be found in the Office of the Ombudsman/National Human Rights Institution, *Detention Centre Inspections Report*, June 2015, available at www.ombudsman.gov.ws

- No uniform induction process for detainees
- Insufficient provision of food (2 meals per day);
- Remote location of the facility preventing access to family visits;
- Inadequate staffing levels;
- Incomplete record keeping.

Recommendation 20: That the Samoan Government fully implement all the recommendations in the NHRI's, *Detention Centre Inspections Report*, June 2015.¹⁰⁹

Recommendation 21: That the Samoan Government ensure that a human rights based approach is incorporated in the design and development of the new prison facility at Tanumalala.

86. A number of serious areas of concerns were identified during the Oloamanu inspection and additional inspections; **Classification of detainees; Hygiene and good health; Labour; and Education and rehabilitation.**

11.1 Classification of juveniles in detention

87. The inspection of Oloamanu Juvenile Centre identified a lack of classification and separation of young prisoners. Within the detention facility there were a number of detainees over the age of 18 which has led to security and safety implications. In December 2014 it was reported that an 11 year old male detainee was raped by a 19 year old male detainee within Oloamanu.¹¹⁰ The absence of classification and separation of juvenile detainees is in contravention of rule 28 of the Havana Rules. The NHRI encourages the government to ensure that appropriate separation of juvenile offenders from mainstream prison population occurs in accordance with the *Prisons and Corrections Act 2013* and the relevant international human rights standards.
88. In addition to juveniles being held in Oloamanu and Tafaigata prisons alongside adults, the NHRI found a juvenile being detained in a police lock up facility in Savaii. The facility was filthy, had poor lighting, very poor ventilation, no bedding and no toilet or shower facilities. Bottles of urine littered the floor. The NHRI demanded immediate action regarding this facility and it has since received a substantial upgrade and assurances have been made not to detain juveniles in these conditions again. The NHRI will follow up on these assurances during the next round of inspections, scheduled for October/November 2015.

Recommendation 22: There should be a clear classification and separation of young prisoners. At no times should children be detained

¹⁰⁹ NHRI, *Detention Centre Inspections Report*, June 2015, found at www.ombudsman.gov.ws

¹¹⁰ Reported by the Samoa Observer on 10 December 2014

with adults. The Samoan Government ensure that the Samoan Prisons and Corrections Service immediately apply the classification process of prisoners, as established under the Prisons and Corrections Regulation 2014.

11.2 Hygiene and good health

89. The NHRI has serious concerns that the government is failing to meet its obligations under Article 39 of the Convention in relation to hygiene and health at the Oloamanu Juvenile Detention Centre. At the time of the Oloamanu inspection there were two toilets, two showers and one sink in each house. Due to a water shortage these facilities were not in use and detainees were required to use an outside shower and go to the toilet in a field. Water shortages at the facility were reported to be ongoing and of a serious nature. It was found that detainees had previously gone two months without water and had to survive only on coconuts and without any showers or toilets. This water shortage had also led to a decline in kitchen hygiene standards and a subsequent outbreak of frequent gastro intestinal illness among detainees. This directly contravenes Rule 37 of the Havana Rules .
90. The NHRI believes that the standard of medical care within Oloamanu Juvenile Centre is inadequate and is in direct breach of Rules 49 to 55 of the Havana Rules. Detainees within Oloamanu are not given a medical inspection upon arrival at the facility, as per Rule 50, and there is no ongoing medical record keeping. There is no medical clinic within the facility, nor a first aid kit to cater for any minor injuries or illness. Detainees must provide their own first aid items or ask the guards for them. On the day of the Inspection there was one prisoner with a swollen boil on his leg for which he had received no medical treatment. Further, prison staff are currently not provided with awareness-raising on child development and basic training on the health care of children in accordance with Rule 33 (3) of the Bangkok Rules. Finally, there is no separate accommodation for prisoners who are suffering from ill-health, mental disorder or disability, nor process for treating prisoners with mental disorders, as per Rule 53 of the Havana Rules. The facility lacks the resources and training to be able to meet these requirements. Additional funds should be provided to the Samoa Prisons and Corrections Services to address these deficiencies.
91. The NHRI is also concerned about the health of infants within the women's facility at Tafaigata prison. Whilst the NHRI commends the government in allowing incarcerated mothers to stay with their infant child whilst in prison¹¹¹, the accommodation is not a fit and proper place to raise babies. There is insufficient space to be shared by the mothers and the possibility of illness for babies via infection from sick detainees is high. This was evident on the day of the inspection when it was observed that one baby had a skin condition. Furthermore, there is no proper bedding or nursery for the babies. The NHRI believes that plans for the development of a new prison facility to be built in

¹¹¹ See Rule 49 of the Bangkok Rules

2016 should include a nursery that is separate to the main prison and which is staffed by qualified medical staff, in line with Rule 23 (2) of the UN Minimum Standards for the Treatment of Prisoners.

Recommendation 23: The Samoan Government, in relation to Oloamanu Juvenile Centre and all juvenile detainees in Samoa generally should:

- a) Implement a uniform induction process in line with Rule 27 United Nations Rules for the Protection of Juvenile Deprived of their Liberty.**
- b) Improve hygiene and sanitation, including resolving water supply issues.**
- c) Improve access to health care services and maintain medical records for each juvenile detainee.**
- d) Provide nursery facilities and separate accommodation for mothers with babies and consider implementation of Rule 33 (3) of the Bangkok Rules.**

11.3 Labour

92. A major concern of the NHRI is the emerging child labour issue at Oloamanu Juvenile Centre which is a breach of Article 32 of the Convention as well as the sections 43-46 of the Havana Rules.
93. According to some detainees, they are required to work twice a day (morning and evening) for more than 8 hours. Prison authorities refute this claim, stating that detainees work no more than 6 hours a day. The detainees are required to maintain a 300 acre taro plantation used to supply food for Samoa's other prisons and other organizations such as government-run nursing homes (Mapufagalele). During the inspection, there were reports that the head officer expected a particular daily output from the plantation, and if he was dissatisfied with the amount harvested, he would deny inmates their lunch break and send them back to work during the heat of the day.¹¹² Further, detainees told the Inspection Team that at times they would be required to work during scheduled breaks or when they were sick.
94. Whilst the NHRI acknowledges the rehabilitative effects of manual work (prison staff reported significantly reduced returned detainees working under this system), and the discrepancy in accounts of the amount of work that is undertaken each day, it remains concerned that the amount of work required of detainees does not allow for educational or other rehabilitation programs. Further, the NHRI views the current system to be a breach of section 45 of the Havana Rules, as juvenile detainees receive no remuneration for the work they perform at Oloamanu, unlike female detainees in Tafaigata who are able to sell the goods they produce.

¹¹² Office of the Ombudsman/National Human Rights Institution, *Detention Centre Inspections Report*, June 2015, at page 23

Recommendation 24: That the Samoan Government reduce the number of working hours to 4-6 hours per day for juvenile detainees and used the time saved on education and other rehabilitation activities;

Recommendation 25: That the Samoan Government establish a remuneration system for detainees in Oloamanu for work undertaken at the detention centre.

11.4 Education and rehabilitation

95. The NHRI would like to see a greater focus placed on educational and vocational activities within Oloamanu Juvenile Centre with the desirability of promoting detainees reintegration into the community so that they can assume a constructive role in society.¹¹³ The NHRI does not consider the current system to be fulfilling the right to education suited to the needs of the detainee¹¹⁴, the right to pursue further education¹¹⁵ or the right to receive vocational training¹¹⁶.
96. Current programs include daily bible study led by the prison officers, a weekly cultural day led by the facility matai (village chief) and further church education every Friday led by a local church group. In addition to this, Ministers from Malua Theological College provide a computer room for the facility and deliver two computing lessons per week for prisoners. However, computer classes are only delivered to prisoners under the age of 18 who can demonstrate that they are literate and have some understanding of computing, rendering the facility severely underused. There were also some basic facilities for car maintenance and car mechanic training that was reportedly used on an ad hoc basis. The NHRI concurs with the detainees' view that there are not enough educational or vocational programs to prepare them for life outside detention.
97. The NHRI has recently been made aware of efforts by the Commissioner of Samoa Prisons and Corrections and his staff to develop closer relationships with the families of juveniles in detention in order to facilitate a smoother reintegration following release. The Commissioner is working to obtain agreements from families to care and support their incarcerated family during periods of day release. It is hoped that this strengthening of the family unit and reintegration of the detainee within normal social hierarchy will assist the detainee to reintegrate smoothly back into society. The Commissioner has reported that the aim is also to re-establish broken family ties that may have contributed to the period of detention. The NHRI commends these efforts and will support the Commissioner in his efforts to introduce further rehabilitation programs for juvenile detainees.

¹¹³ *The Convention on the Rights of the Child*; Article 40(1)

¹¹⁴ Havana Rules, rule 38

¹¹⁵ Havana Rules, rule 39

¹¹⁶ Havana Rules, rule 42

Recommendation 26: That the Samoan Government develop systematic and regular educational and vocational programs for juvenile detainees with the aim of rehabilitating juvenile detainees and successfully integrating them back into society.

11.5 Fa'asamoa, juvenile justice and other identified issues

98. The fa'asamoa has long played an important role in detention facilities in Samoa and it is important to detail how it still contributes to the safety and security of juveniles held within Oloamanu and Tafaigata.
99. In each facility, the Corrections Management selects a matai (chief) for each cell based on maturity and leadership skills of the prisoner. In Oloamanu, one matai is based there permanently (taken from Tafaigata). The matai is seen as a leader and mentor to prisoners who assist with resolving any minor issues/disputes among the prisoners and raises any concerns they might have with facility staff and vice versa. They also teach and mentor juveniles in the *fa'asamoa*, teaching them about feavaa'i (mutual respect), alofa (love) and fepuipua'i (mutual protection). The social framework that this provides juvenile detainees undoubtedly helps with rehabilitation, lowers rates of recidivism and improves safety and security within the facilities. The NHRI supports the integration of *fa'asamoa* and detention centre management and welcomes the Commissioner of Prisons and Corrections Services recent stated commitment to ensuring its retention and application.
100. The NHRI is concerned about the use of the matai system to strengthen the safety and security within juvenile detention – that it could lead to prisoners not being able to make a complaint through the formal channels in accordance with Rule 75 of the Havana Rules. The NHRI welcomes the introduction of a formal complaints mechanism to coexist alongside the matai system, implemented shortly before the inspection of Oloamanu Juvenile Centre. The NHRI will continue to monitor the effectiveness of this dual system through its inspections.
101. The NHRI is compelled to highlight a concerning incident which occurred in October 2014. It was reported in the media that a 3 year old child had been locked up inside a police custody cell alongside his father, who had been arrested for motoring offences.¹¹⁷ This is in contravention of Article 37 (b) of Convention which clearly states that no child shall be deprived of their liberty unlawfully or arbitrarily.
102. The NHRI undertook an investigation into the circumstances of the case and produced a report highlighting this as a breach of Article 37 (b).¹¹⁸ The report called for the demotion of the culpable officers and a review of the culture within the Police force which contributed to the unlawful detention. These

¹¹⁷ Samoa Observer 'Three year old locked up in police cell', 2 October 2014 at <http://www.samoobserver.ws/home/headlines/11776-three-year-old-locked-up-in-police-cell> [accessed 10 September 2015].

¹¹⁸ Report can be found at <http://www.samoobserver.ws/other/legal/11911-father-police-failed-boy->

recommendations were implemented and the NHRI is currently working to provide new Police recruits with human rights training to prevent incidents such as this in the future.

103. The Government has yet to implement the Committee's recommendation in its last periodic report to raise the minimum age of criminal responsibility to an internationally acceptable level. In General Comment No. 10, the Committee on the Rights of the Child concludes that 'a minimum age of criminal responsibility below the age of 12 years is considered by the Committee not to be internationally acceptable'.¹¹⁹ Under the *Youth Offenders Act 2007*, the age of criminal responsibility begins when a child turns 10. The NHRI therefore considers the Government to be failing to meet its Article 4 (3) responsibility to establish a minimum age level that is internationally accepted and that this should be immediately reviewed.

Recommendation 27: That the Samoan Government review the *Youth Offenders Act 2007* and raise the minimum age of criminal responsibility to an internationally accepted level.

3 Recommendations

104. The National Human Rights Institution makes the following recommendations:
- Recommendation 1: That the Samoan Government continues to strengthen its efforts to ensure that the provision and principles of the Convention are widely recognised and understood by adults and children alike. In this regard, it encourages the Samoan Government to continue to disseminate and raise awareness of the Convention among children, their parents and other caregivers and all relevant professional groups working with and for children. The Committee also invites the State party to engage with community leaders, including church leaders, in discussion on children's rights in the context of Samoan culture, with a view to bringing about further changes in the attitudes and behaviour of these key opinion leaders in society
 - Recommendation 2: The NHRI endorses the findings and recommendations of the SLRC's Child Care and Protection Legislation Report with regards to the inconsistencies in the definition of a child in domestic legislation. The NHRI recommends that the Samoan government include all the recommendations from the SLRC report into the Child Care and Protection Bill. Furthermore, the NHRI recommends that the Samoan Government amend and present the Bill at the first session of Parliament after the next election in March 2016.
 - Recommendation 3: That the Samoan Government ensures that the DVU (and all institutions dealing with reports of violence against children) to regularly collect statistical data on domestic and sexual

¹¹⁹ UN Committee on the Rights of the Child (CRC), CRC General Comment No. 10 (2007): Children's Rights in Juvenile Justice, 25 April 2007, CRC/C/GC/10 Paragraph 32

violence disaggregated by sex, age, region (urban/rural), and relationship between victim and perpetrator.

- Recommendation 4: The NHRI recommends that the Samoan Government withdraw its current reservation under Article 28 of the Convention.
- Recommendation 5: That the Samoan Government assist in reducing the incidental costs of education so that primary education in Samoa can be completely free.
- Recommendation 6: That the Samoan Government continue to implement its National Policy on Disability as well as increase disability training for teachers in government schools.
- Recommendation 7: That the Samoan Government engage with UN partners to implement CSE in accordance with UNFPA's Operational Guidance in order to empower young people to protect their health, wellbeing and dignity.
- Recommendation 8: The Samoan Government, in consultation with the NHRI, UNFPA and UNAIDS, should launch comprehensive public health campaigns around safe sex, in particular addressing increased understanding and acceptance of condom and contraceptive use at political, religious and traditional leadership levels.
- Recommendation 9: To promote attitudinal change in the community, the Samoan Government expand its Mothers and Daughters programme to become nationwide and consider a similar programme for fathers and sons in order to combat negative social and cultural attitudes towards teenage pregnancy.
- Recommendation 10: The Samoan Government should foster improved teacher and student acceptance of pregnant students, and encourage pregnant girls to remain in school or provide alternative options for them to continue their schooling while pregnant as well as once they become mothers through an outreach and education campaign.
- Recommendation 11: Corporal punishment in the family and community should be addressed both through awareness raising and legislative reform: The Samoan Government should be supported in their continued efforts to advocate for zero tolerance of corporal punishment at the village level combined with further awareness-raising activities; .
- Recommendation 12: The Samoan Government support SVSG so that it can adequately provide counselling and support services for victims of sexual assault, domestic violence and incest. However, the responsibility for providing such services falls directly within the role of the state. The Samoan Government should allocate resources from its annual budget to adequately perform this role, either to be provided directly to SVSG to enhance its services to meet the high demand or to establish a public counselling clinic for victims of such abuse.

- Recommendation 13: The Samoan Government, in consultation with the NHRI, should work with the village *fono*, relevant authorities and relevant NGOs to increase public awareness of the *Family Safety Act* and how to engage in its legal proceedings.
- Recommendation 14: The NHRI should work with the Samoan Government to investigate and develop child-friendly reporting avenues for child abuse, sexual assault and incest.
- Recommendation 15: The Samoan Government, in consultation with the NHRI, should establish a system for the regular collection of statistical data on domestic violence, sexual abuse and incest disaggregated by sex, age, region (urban/rural), and relationship between victim and perpetrator to be reported on a quarterly basis to the NHRI.
- Recommendation 16: The Samoan Government should provide dedicated funds and adequate assistance to all NGOs working on the protection of families, especially in rural areas.
- Recommendation 17: That the Samoan Government review the *Family Safety Act 2013* for the inclusion of protections for persons who report incidence of violence, including sexual violence.
- Recommendation 18: That the Samoan Government enforce the ban on corporal punishment in schools, in line with the *Education Act 2009* and the Convention
- Recommendation 19: That the Samoan Government ensure enforcement of the *Education Act 2009* and reduce the rates of school-aged children working as street vendors.
- Recommendation 20: That the Samoan Government fully implement all the recommendations in the NHRI's, *Detention Centre Inspections Report*, June 2015.¹²⁰
- Recommendation 21: That the Samoan Government to ensure that a human rights based approach is incorporated in the design and development of the new prison facility at Tanumalala.
- Recommendation 22: There should be a clear classification and separation of young prisoners. At no times should children be detained with adults. The Samoan Government should ensure that the Samoan Prisons and Corrections Service immediately apply the classification process of prisoners as established under the Prisons and Corrections Regulation 2014.

¹²⁰ NHRI, *Detention Centre Inspections Report*, June 2015, found at www.ombudsman.gov.ws

- Recommendation 23: The Samoan Government, in relation to Oloamanu Juvenile Centre and all juveniles detainees in Samoa generally should:
 - a) Implement a uniform induction process in line with Rule 27 United Nations Rules for the Protection of Juvenile Deprived of their Liberty.
 - b) Improve hygiene and sanitation, including resolving water supply issues.
 - c) Improve access to health care services and maintain medical records for each juvenile detainee.
 - d) Provide nursery facilities and separate accommodation for mothers with babies and consider implementation of Rule 33 (3) of the Bangkok Rules.
- Recommendation 24: That the Samoan Government reduce the number of working hours to 4-6 hours per day for juvenile detainees and use the time saved on education and other rehabilitation activities;
- Recommendation 25: That the Samoan Government remunerate detainees for produce not used by the facility.
- Recommendation 26: That the Samoan Government to develop systematic and regular educational and vocational programs for juvenile detainees with the aim of rehabilitating juvenile detainees and successfully integrating them back into society.
- Recommendation 27: That the Samoan Government review the *Youth Offenders Act 2007* and raise the minimum age of criminal responsibility to an internationally accepted level.