

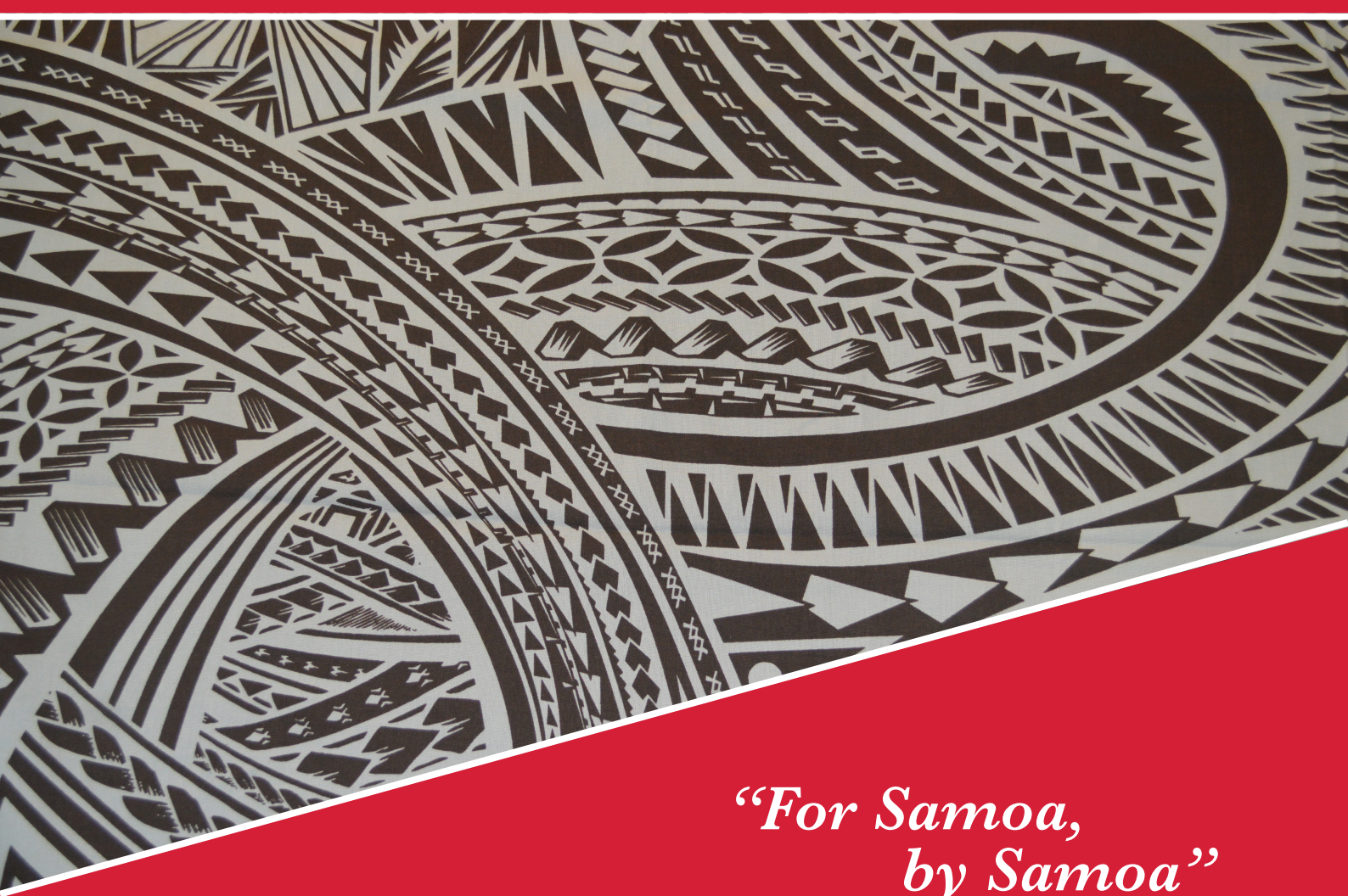
OFFICE OF THE OMBUDSMAN &
NATIONAL HUMAN RIGHTS INSTITUTION



Komesina o Sulufaiga



OMBUDSMAN
NHRI SAMOA



*“For Samoa,
by Samoa”*

**STATE OF HUMAN
RIGHTS REPORT**

2015

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Statement from the Ombudsman

The Government of Samoa remains committed to the progressive realisation of human rights, and as such, it is with great honour that I present this country's very first State of Human Rights Report to Members of Parliament. Preparation of this document was no small feat, but as the National Human Rights Institution, our Office has faithfully dedicated itself to this task despite its limited human and financial resources.



This Report has been produced as a result of the hard work and dedication of my staff and the cooperation between this Office and the relevant stakeholders. It is in this spirit of cooperation that we seek to work with the Government in order to ensure that human rights are protected everyday for everyone in Samoa.

Human rights are not merely foreign ideals as many wish to see them, but they have roots within Samoan culture also. A take home point from this Report is that the weaving together of *Fa'asamoa* and human rights principles will make a stronger and more harmonious society. In that way, this Report truly is "for Samoa, by Samoa."

May there be continuous blessings over the people of Samoa.

Soifua ma ia manuia,

A handwritten signature in black ink, which appears to read "Maiava Iulai Toma". The signature is fluid and cursive.

Maiava Iulai Toma
Ombudsman

Acronyms

AGO	Attorney General's Office
BNPL	Basic Needs Poverty Line
CAT	The Convention against Torture
CBO	Community Based Organisation
CED	The Convention for the Protection of All Persons from Forced Disappearance
CEDAW	The Convention on the Elimination of All Forms of Discrimination against Women
CEO	Chief Executive Officer
CERD	The Convention on the Elimination of All Forms of Racial Discrimination
CID	Criminal Investigation Division
CMW	The International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families
COI	Commission of Inquiry
CPBR	Child Protection Baseline Report
CPR	Contraceptive Prevalence Rate
CRC	The Convention on the Rights of the Child
CRPD	The Convention on the Rights of Persons with Disabilities
CSE	Comprehensive Sexuality Education
DMO	Disaster Management Office
DHS	Demographic Health Survey
DRM	Disaster Risk Management
DVU	Domestic Violence Unit
FSA	Family Safety Act
HIV	Human Immunodeficiency Virus
ICCPR	The International Covenant on Civil and Political Rights
ICESCR	International Covenant on Economic, Social and Cultural Rights
ILO	International Labour Organisation
MCB	Media Council Bill
MCIL	Ministry of Commerce, Industry and Labour
MDG	Millennium Development Goal
MESC	Ministry of Education, Sports and Culture
MFAT	Ministry of Foreign Affairs and Trade
MHA	Mental Health Act
MJCA	Ministry of Justice and Court Administration
MMR	Maternal Mortality Rate
MNRE	Ministry of Natural Resources and Environment
MOF	Ministry of Finance
MOH	Ministry of Health

MOP	Ministry of Police
MOU	Memorandum of Understanding
MWCSO	Ministry of Women, Community and Social Development
MWTI	Ministry of Works, Transport and Infrastructure
NAPA	National Adaptation Programme of Action
NCC	National Church Council
NCD	Non-Communicable Disease
NDMP	National Disaster Management Plan
NGO	Non-Governmental Organisation
NHRI	National Human Rights Institution
NOLA	Nuanua O Le Alofa
NPCCC	National Policy of Combatting Climate Change
NUS	National University of Samoa
NYC	National Youth Council
PWD	Person with a disability
SBS	Samoa Bureau of Statistics
SFHA	Samoa Family Health Association
SGSS	Second Generation Surveillance Survey
SIDS	Small Island Developing State
SIEDP	Samoa Inclusive Education Development Program
SLRC	Samoa Law Reform Commission
SPC	Secretariat of the Pacific Community
SPCS	Samoa Prisons and Correctional Services
SSFGS	Samoa School Fee Grant Scheme
STI	Sexually Transmitted Infection
STN	Sui Tamatai o Nu'u
SUNGO	Samoa Umbrella Organisation for Non-Governmental Organisations
SVSG	Samoa Victims Support Group
SWA	Samoa Water Authority
TMB	Treaty Monitoring Body
TVET	Technical and Vocational Education and Training
UDHR	The Universal Declaration of Human Rights
UN	United Nations
UNAIDS	The Joint United Nations Programme on HIV/AIDS
UNDP	United Nations Development Program
UNESCO	United Nations Education, Science and Culture Organization
UNFPA	United Nations Population Fund
UNICEF	United Nations Children's Fund
UNWOMEN	United Nations Entity for Gender Equality and the Empowerment of Women
UPR	Universal Periodic Review
WHO	World Health Organization

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*WOMEN FOCUS GROUP
DISCUSSIONS IN THE VILLAGE OF
IVA, SAVAII, 11 MARCH 2015*

01

EXECUTIVE SUMMARY





Executive Summary

The Report begins with a discussion of human rights in the Samoan context, including a brief overview of the human rights obligations that Samoa is a signatory to, as well as the rights contained within the Constitution of Samoa. Importantly, the Report discusses the relationship between *Fa'asamoa* and international human rights, including the relationship between individual and community rights. It also attempts to dispel misconceptions that currently exist in Samoa about the nature and purpose of human rights.

The Report explores *Fa'asamoa* principles of equality, respect and protection, which complement basic human rights in international law, and the relationship between these principles and the bigger picture issues which form the basis of the Report, namely, the equality, respect and protection **of vulnerable populations, to all aspects of health, to environmental health, and to religious and economic freedoms.**

The section relating to vulnerable populations is the main focus of the Report as it highlights the need for better safeguards for equality and respect for **women, children, people with disabilities (PWDs) and prisoners.** It was clear from the research and outreach the NHRI conducted that these groups are the most vulnerable in Samoan society and that are most likely to need increased protections regarding their basic human rights.

The Report concludes with a discussion of the emerging issues of **mental health and freedom of speech.** These issues emerged from the consultations held around Samoa and will be followed up with in subsequent reports as more data and dialogue is collected.

Contained within the Report are a number of recommendations to relevant Government Ministries and agencies in order for the people of Samoa's human rights to be fully protected. All of the recommendations relate to four categories: **(1) outreach and education, (2) funding, (3) policy, and (4) data collection.**

The Report strives to paint as complete a picture as possible of the human rights situation that currently exists in Samoa, how they are protected and where improvements could be made for the progressive realisation of human rights in the country.



*TITLED AND UNTITLED MEN
FOCUS GROUP DISCUSSIONS
IN THE VILLAGE OF MOATA'A,
14 MARCH 2015.*

02

INTRODUCTION



In 2013, the Office of the Ombudsman became Samoa's National Human Rights Institution (NHRI). An NHRI is an independent mechanism of national human rights protection and promotion that plays an important role in linking International Human Rights Instruments to local level implementation.¹ Pursuant to the *Ombudsman (Komesina o Sulufaiga) Act* of 2013, the Office of the Ombudsman and NHRI ('the Office' or 'the NHRI') has prepared Samoa's first periodic State of Human Rights Report, covering the period since its inception to June 2015.² This Report provides the Legislative Assembly with information on the progressive realization of human rights in Samoa, highlighting the fact that the primary responsibility to promote and protect human rights rests with the Government.

The main objective of this Report is to comprehensively depict how human rights are recognized and protected in Samoa. In doing so, it highlights what the Government is doing well, what gaps exist, what needs to be improved, and then provides recommendations to address these issues that the Office will then monitor in subsequent reports. In preparing this Report, the Office undertook consultations and collected data from government, civil society, and communities to present as complete a picture as possible regarding human rights in the country. The Report is for Samoa, by Samoa.

Ministers of the Cabinet and Members of Parliament continue to make progress in incorporating human rights considerations into their decision making processes, but as is the case in the progressive realization of human rights, there is always room for improvement. For the purposes of monitoring and evaluating Samoa's international human rights obligations, but also for the improvement of conditions for the Samoan people, this Report covers: **(1) Vulnerable Populations, (2) Community, Family and Personal Health, (3) Environmental Health, (4) Religious and Economic Freedom and (5) Emerging Issues.**

2.1 REPORT METHODOLOGY

In an effort to make this Report as inclusive and participatory as possible, the Office sought the views of a wide range of groups and individuals, including populations usually marginalized in decision making such as rural women, children and persons with disability (PWDs). The Office collected data through surveying, consultations and focus groups as follows.

1. The Human Rights Survey 2014-2015 ('the Survey') sought to capture the views of Samoans on a number of issues for inclusion in the Report.³ The Office collected a total of 2,515 surveys that sampled an age range of 10 and 88, had a gender breakdown of 47% male and 53% female, and sampled 245 total villages.⁴
2. Consultations sought to involve all arms of government in the compilation of this Report and included exchanges with government ministries, non-governmental organizations (NGOs), United Nations (UN) agencies, regional and international organizations, and the Ombudsman's Advisory Council.⁵ The consultation process allowed stakeholders to present issues of concern to the Office for inclusion in the Report. The Office also requested specific data on relevant issues and sent drafts of the Report to relevant ministries, agencies, and organizations for input.
3. Focus groups with a range of villages and interest groups sought to capture detailed perspectives and quotations related to the human rights issues raised in the Survey and Consultations.⁶ These groups also provided clarification on Survey questions, particularly during the Village Consultations where participants were split up according to the following categories: titled men, untitled men, married women, and unmarried women (titled or not).⁷

¹ See National Human Rights Institution (NHRI) Advisory Council Handbook at 12.

² See Part 4 of the *Ombudsman (Komesina o Sulufaiga) Act of 2013* for the specifics of the role.

³ There were two versions of the Survey used in the process, one long and one short that contained 23 and 15 questions respectively. See Annex A and Annex B for copies of each Survey.

⁴ This represents 67% of total villages (245 out of 364). See Annex C for a full breakdown of the total Survey sample.

⁵ The Advisory Council is a pluralist representation of civil society that brings the Office into compliance with the 'Paris Principles' for national human rights institutions. For a full listing of ministries and organizations consulted, please refer to Annex D.

⁶ For a full listing of villages and interest groups that participated in focus groups, please see Annex D.

⁷ Where feasible, this was the breakdown of the focus groups. Due to human resource constraints, some villages were simply broken down into male and female focus groups.

Data collection is important to measuring the state of human rights and its subsequent progress. From the beginning, data collection and analysis proved to be a challenge as the collection of *meaningfully* disaggregated data needs improvement.⁸ The collection, analysis and dissemination of comprehensive data disaggregated by sex, age, village, disability, socio-economic background, etc. *must* become regular practice in Samoa. For example, in order for the collection of data on domestic violence to be meaningful, it must be disaggregated by sex, age, village, and relationship between victim and perpetrator and updated on a regular basis. This Report demonstrates the need for proper data disaggregation and attempts to provide a baseline measurement of the state of human rights despite these challenges.

SCOPE AND LIMITATIONS OF THE REPORT

Given that this is Samoa's first status of human rights report, it is not a fully comprehensive review of all internationally recognised human rights. Rather, it reports on human rights issues from the Samoan context by drawing upon the fundamental rights that are enshrined in Samoa's own constitution. Working from this constitutional framework, the Office produced a survey on the most commonly identified issues in Samoa's reviews under international Treaty Monitoring Bodies (TMBs),⁹ in consultation with the international organisations, academics, and Government Ministries.¹⁰ In recognising the need for this Report to resonate with the Samoan people, the Office went directly to communities to confirm the validity of the issues in the Survey as well as to capture their perspectives on human rights. As a result, this Report draws attention to the most pressing human rights issues with a focus on vulnerable populations such as women, children, PWDs and prisoners, as identified in the community consultations.

There are two major limitations within this Report and its methodology. First, the Office did not have

the resources, time or capacity to undertake a fully comprehensive status report. Second, there exists a data disparity between rural and urban populations within the research. The village consultations focused on rural areas with traditional village settings and a representative sample for urban populations was not reached. This made disaggregation difficult as rural populations are over-represented in the data. This is an issue that will be corrected next year through collaboration with the Samoa Bureau of Statistics (SBS) to undertake formalised survey data collection and analysis.¹¹

STRUCTURE OF THE REPORT

Throughout this Report, quotations from the Survey, consultations, and focus groups are used to highlight both common themes and extreme views on the issues raised.¹² These views do not necessarily reflect the views of the Office; rather, the quotations are meant to provide insight into the perspectives collected. This Report also draws attention to case studies on certain topics to demonstrate the story behind the numbers and encourage public dialogue. Human rights issues do not exist in a vacuum; they can be connected in deeper ways when critically analysed. It is hoped that the narrative formed will spur the Government, civil society, church leaders, and policymakers to engage with one another to tackle these difficult issues.

RECOMMENDATIONS WITHIN THE REPORT

Recommendations are made that are directly related to the issues raised, which can all be found in bold. Keeping in mind the audience and their power to create social change, all of the recommendations made relate to four categories: (1) outreach and education, (2) funding, (3) policy, and (4) data collection. A recommendations table that outlines action plans, responsibilities and timelines is included at the end of the Report for easy reference.

⁸ See e.g. note 33 at para. 23 and note 90 at 20.

⁹ See Annex A for the Survey and its constitutional framework.

¹⁰ Consultation with international bodies includes the Office of the High Commissioner for Human Rights (OHCHR), the Asia Pacific Forum (APF); Consultation with academia includes Dr. Malama and other members of the Office's Advisory Council; Consultations with Ministries include Samoa Bureau of Statistics (SBS) and the Ministry of Women, Community and Social Development (MWCSO).

¹¹ SBS will be taking over the Human Rights Survey, scheduled to begin July 2015.

¹² The Office also sought qualitative answers from the school consultations asking three specific questions: (1) When I hear the term 'human rights' what three things come to mind? (2) What are three things you would like to see changed in Samoa? (3) What are three things you would like to stay the same?

2.2 GENERAL HUMAN RIGHTS UNDER INTERNATIONAL AND NATIONAL LAW

INTERNATIONAL LAW

Samoa is Party to many of the core international human rights instruments including the Convention on the Rights of the Child (CRC), the Convention for the Protection of All Persons from Enforced Disappearance (CED), the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), and the International Covenant on Civil and Political Rights (ICCPR).¹³ Recently, Samoa also signed the Convention on the Rights of Persons with Disabilities (CRPD).¹⁴ Under these Conventions, Samoa is required to take all appropriate measures, including legislation, to ensure the full development and advancement of the rights contained in each treaty. The provisions of an international treaty must therefore be reflected in domestic legislation for Samoa to be compliant with international law.

It is important to note that human rights are protected in other core human rights instruments to which Samoa is not Party including the International Covenant on Economic, Social and Cultural Rights (ICESCR), the International Convention on the Elimination of All Forms of Racial Discrimination (CERD), the International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families (CMW), and the Convention against Torture (CAT) as well as each of their respective Optional Protocols. Although Samoa is not a party to these conventions, some of the principles in these conventions have already been incorporated into national laws, thus making ratification a relatively uncomplicated process. Consideration should be given to ratifying these international conventions.

UNIVERSAL PERIODIC REVIEW

In May 2011, Samoa completed its first Universal Periodic Review (UPR) under the UN Human Rights Council.¹⁵ The UPR is a unique process that involves a review of the human rights records of all UN Member States. It is a State-driven process that provides Samoa the opportunity to declare what action it has taken to improve the human rights situation and fulfil its human rights obligations.¹⁶ Establishing this Office as the NHRI is one major UPR recommendation for which the Government should be highly commended for fulfilling.¹⁷ The recommendations of the UPR have largely informed the investigations and reporting for this Report. Samoa is scheduled to undergo UPR in April 2016 and it is expected that the NHRI will draw heavily on this Report in summarizing Samoa's human rights achievements, issues and priorities for its submission.¹⁸

NATIONAL LAW

The Samoan Constitution guarantees certain fundamental human rights to all people such as the right to life (Article 5), to personal liberty (Article 6), freedom from inhumane treatment (Article 7), from forced labour (Article 8), the right to a fair trial (Article 9), freedom of religion (Articles 11, 12), rights regarding freedom of speech, assembly, association, movement and residence (Article 13), and freedom from discriminatory legislation (Article 15). These fundamental rights also correspond directly with the rights enshrined in the Universal Declaration of Human Rights (UDHR)¹⁹ and the international human rights instruments previously listed. This demonstrates how these laws are mutually reinforcing; that is, they work together to uphold and protect the rights of all Samoans.

Equality before the law and equal protection under the law without discrimination constitute a basic and general principle relating to the protection of human rights and to their enjoyment. It also happens to be a

¹³ Samoa ratified the Convention on the Rights of the Child (CRC) on 29 November 1994 with one reservation under Article 28(1)(a) relating to the provision of free primary education. It ratified the Convention on the Protection of All Persons from Enforced Disappearance (CED) on 27 November 2012 without reservation. It acceded to the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) on 25 September 1992 without reservation—the first Pacific island to do so. It acceded to the International Covenant on Civil and Political Rights (ICCPR) on 15 February 2008 without reservation.

¹⁴ Samoa signed the Convention on the Rights of Persons with Disabilities (CRPD) on 24 September 2014, but has not yet ratified, or given legal force, to the Convention.

¹⁵ UN Human Rights Council, *Compilation: [Universal Periodic Review]: Samoa / prepared by the Office of the High Commissioner for Human Rights in accordance with paragraph 15 (b) of the annex to Human Rights Council resolution 5/1*, 21 February 2011, A/HRC/WG.6/11/WSM/2, available at: <http://www.refworld.org/docid/4da2bda12.html> [accessed 23 June 2015].

¹⁶ UN Human Rights Council, *National report submitted in accordance with paragraph 15 (a) of the annex to Human Rights Council resolution 5/1: [Universal Periodic Review]: Samoa*, 14 February 2011, A/HRC/WG.6/11/WSM/1, available at: <http://www.refworld.org/docid/4da2ae5e2.html> [accessed 23 June 2015].

¹⁷ UN Human Rights Council, *Report of the Working Group on the Universal Periodic Review: Samoa*, 11 July 2011, A/HRC/18/14, available

fundamental right protected in Samoa's Constitution. In particular, Article 15(1) states that all persons are equal before the law and there is no discrimination on the basis of descent, language, sex, religion, political or other opinion, social origin, place of birth or family status.²⁰ Specific national laws and legislation directly related to the human rights issues raised are discussed throughout the body of this Report.

2.3 FA'ASAMOA AND HUMAN RIGHTS

Human rights are underpinned by core values of respect, dignity, equality and security for everyone. Similarly, *Fa'asamoa* or the Samoan way of life holds core values that guide social interaction such as respect, dignity, love, protection, and service, which mutually reinforce human rights. The following are some examples of these core values:

- *Feavaa'i* (Mutual Respect) is a core value for which Samoan culture is well known. It is demanded of all Samoans, particularly children towards their parents, brothers towards their sisters, serving members towards their chiefs, young towards the old, congregations towards their pastor and so on. Respect is shown not merely in the manner of talking, but also in the body language of the person.
- *Alofa* (Love) is expressed not only within the family and community but also towards guests. It includes parents caring and providing for their children, ensuring that they receive the best of everything; children caring and looking after their elderly parents; brothers and sisters looking out for each other; neighbours providing help and assistance wherever they can; the commitment and sacrifice families make towards the church; and welcoming visitors to Samoa with open arms.
- *Fepuipua'i* (Mutual Protection) is demonstrated when parents care for and protect their children from harm and danger, and vice versa when roles are reversed later in life, or when the *matai* of the village ensures that members of the village live peacefully, and villagers uphold and protect the dignity of the *matai*.

When drafting the Constitution Samoa's forefathers incorporated fundamental human rights into the supreme law. This is testament to the appreciation Samoa's ancestors had for the human rights of all Samoans. Therefore, while there is divergence in the origin of human rights beliefs between Europeans and Samoans, they are equivalent in nature and complement each other by sustaining human dignity and entitlements and improving the welfare of individuals and their families.

However, some Samoans view human rights as a foreign concept that does not have a place in Samoa. This misconception seems to exist because of the Samoan translation of 'Human Rights'—*Aia Tatau o Tagata Soifua*. It seems that when some people hear the term *Aia Tatau* they tend to pay strong attention only to the word *Aia* instead of the whole term *Aia Tatau*. In the Samoan context, *Aia* on its own is a very powerful word that implies 'you have no control over me' or 'I can do or say anything because it is my right.' Therefore, individuals tend to think that they have freedom or '*Aia*' to do anything with no limitations. The Survey found that a large majority of participants (76%) claimed to know what human rights are, and of that total, a significant portion (69%) thought that human rights and *Fa'asamoa* conflict.²¹ This conflict is central to addressing the human rights issues presented in this Report and the NHRI believes that unless this perceived conflict is resolved, the acceptance of human rights in Samoa will continue to be a challenge.

It is important to note that the term *Aia TATAU o Tagata Soifua* in its literal meaning has limitations. The phrase means 'privileges that are appropriate for a person's well being.' That a person whether a child, woman, man, person with a disability or prisoner, should be entitled to privileges appropriate for a human being. For instance, appropriate privileges for a child are to receive a proper education and not to be physically abused or subjected to child labour. It is not an appropriate privilege for the child to disrespect her/his parents. It is an appropriate privilege for a woman to be respected and loved by her

at: <http://www.refworld.org/docid/4e72f6eb2.html> [accessed 22 June 2015]; Specific recommendations at 75.22, 75.23, 75.24 and 75.25.

¹⁸ As part of the UPR process, a shadow report is submitted independently from the government report in order to shine light on specific issues for consideration by the Human Rights Council.

¹⁹ For example, protected within the Universal Declaration of Human Rights (UDHR) are the following: 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).

²⁰ *Constitution of the Independent State of Samoa*, 1960: 3-15.

²¹ For a full review of Questions 1 and 2 of the Survey, see Annex C. When this number was disaggregated by age, the youth (ages 10 to 35) were less likely to find conflict than adults (ages 36 to 88).

husband. It is not appropriate for a woman to be subjected to physical abuse or discrimination. In this way, the people of Samoa need to develop a greater understanding of the term 'human rights' outside of its literal translation. There have been many translations of this term to try to address the misconceptions; however, the NHRI considers that no matter how many translations exist of the term, the underlying misconception will remain. The issue here is the need for continuing education on human rights and this Report is the first step to doing this.

2.4 ENJOYMENT OF COMMUNAL AND INDIVIDUAL RIGHTS

Fa'asamoa is a unique way of life that is not seen in any other country. It prescribes an all-encompassing traditional system of roles and responsibilities that spell out different relationships within the family and community. The traditional *fa'amatai* system (village councils) is central to the organisation of Samoan society. Over the decades, the authority of village councils²² 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.²³ The State relies heavily on this effective system for the maintenance of law and order throughout Samoa. This is the environment and context in which the individual exercises his/her rights and freedoms.

The Constitution declares the protection of fundamental rights and individual freedoms, but it is less explicit on communal rights. Due to this imbalance, village councils have felt that their right to make governing decisions in the interests of communal welfare have been unreasonably trumped in the Courts by claimed individual freedoms. Recently, there have been issues with communal regulations violating fundamental rights under the Constitution that have been heard at the Supreme Court. The most common cases involve

village councils exercising collective opposition over the banishment of villagers or to the establishment of new churches.²⁴ The Supreme Court has been strict in upholding individual fundamental rights as required by the Constitution.

It is clear from the decisions of the Court that individual rights will supersede communal rights as long as it is shown that there is a breach of fundamental rights within the Constitution. However, it has not done so without respect for the village system.²⁵ For example, with regards to banishment, the Court has upheld the decisions of the *Ali'i* and *Faipule* when there is a reasonable restriction imposed by existing law on the exercise of the rights of freedom of movement and residence, in the interests of public order.²⁶ The activities and decisions of the *Ali'i* and *Faipule* within a village must always be undertaken and made subject to the Constitution, even if it is feared that some unrest or disharmony may result.²⁷

In fact, Survey and village consultation participants still raised concerns with regards to the conflict between village council decisions and individual freedoms within the village. This ranged from substantial issues like restrictions on the establishment of new religions and banishment, to more general statements around village rules being too severe and burdensome.²⁸ Under *Fa'asamoa*, the individual is as conscious of self and personal rights and is as desirous of personal dignity as any other individual, but recognises and accepts the role and ultimate authority in the village in which s/he is represented by her/his *matai*.²⁹ However, it is paramount for village councils to properly exercise their authority while also taking into account the individual's human rights and strike an important balance between communal rights and individual rights. While it is desirable not to precipitately undermine the authority of *Ali'i* and *Faipule* in the village communities of Samoa the NHRI firmly believes that when the individual is protected against unjust or unfair governance or other unreasonable interference, society is also protected.

²² Consisting of *Ali'i* and *Faipule* (high chiefs).

²³ See generally Samoa Law Reform Commission (SLRC), *Final Report for the Village Fono Act 1990 and Freedom of Religion* [includes portions of the Commission of Inquiry Report (COI) Report] available at: <http://www.samoalawreform.gov.ws/wp-content/uploads/2014/08/Final-Report-for-the-Village-Fono-Act-1990-and-Freedom-of-Religion.pdf> [accessed 26 June 2015]; See also, *Lafaialii v Attorney General* [2003] W.S.S.C 8 (24 April 2003).

²⁴ See e.g. *Tutuila v Punitia* [2012] W.S.S.C. 107 (21 June 2012); *Ibid.* at 4.

²⁵ Nelson, J. in *Su'a Rimoni Ah Chong v Mulitalo Siafausa Vui* an unreported decision dated 1 August 2006 ("... the power of the village and Matai is important and ought to be respected by this court. But the

power is not greater than the power of the Constitution, the Legislative Assembly, the Supreme Court of Samoa or the rule of law."). His Honour Chief Justice also shared the same view in the case of *Lafaialii v Attorney General* [2003] W.S.S.C. 8 (24 April 2003).

²⁶ *In re the Constitution*, *Taamale v Attorney-General* [1995] W.S.C.A. 1; *02 1995B (18 August 1995)*; affirmed by Article 13(1)(d).

²⁷ Commission of Inquiry (COI), *Commission of Inquiry Report 2010*, on file at the Office of the Ombudsman.

²⁸ In the majority of village consultations, participants often expressed frustration with village councils making decisions without consulting the families or person involved

²⁹ See note 27.



TITLED AND UNTITLED MEN FOCUS GROUP DISCUSSIONS IN THE VILLAGE OF SASINA, SAVAII, 12 MARCH 2014



SAMOAN CULTURE AND TRADITIONS: 'THE AVA CEREMONY'



*IVA VILLAGE CONSULTATIONS,
11 MARCH 2015*

03

EQUALITY, RESPECT AND PROTECTION



The *Fa'asamoa* principles of equality, respect and protection form the basis of safeguarding the rights of all Samoans and complement basic human rights principles. As such, these principles are used to encompass the bigger picture issues highlighted within the Report and are meant to extend to the equality, respect and protection of vulnerable populations, to all aspects of health, to environmental health and to religious and economic freedoms.

3.1 VULNERABLE POPULATIONS

Based on the NHRI's outreach and research, the vulnerable populations requiring increased safeguards for equality, respect and protection were identified as: **women, children, PWDs, and prisoners.**

3.1.1 OUR WOMEN

Women and girls represent almost half (48%) of Samoa's population.³⁰ They are often responsible for the care of children, of the sick, and of elderly relatives. They are relied upon to perform a function known in the *Fa'asamoa* as '*pae ma auli*', literally to properly lay and iron things out. In every family and community women facilitate peace and harmony. As such, it is incredible to regard them as anything less than equal and deserving of support, respect and protection. However, in many respects, this is not the case. From the Survey and research, three interrelated issues have surfaced that must be both acknowledged and addressed at local and national levels: **(1) tackling gender role stereotyping, (2) recognising the unequal participation in political and economic life, and (3) preventing high rates of violence against women.**

TACKLING GENDER ROLE STEREOTYPING

✦ *"In Samoan, mens are more powerful than women even in my own family. [W]hat I want to see changed is women to have the same ability in everything with the mens."* [sic]³¹

In recognizing this issue, the Committee on the Elimination of Discrimination against Women (CEDAW Committee) has expressed concerns about the persistence of harmful norms, practices, traditions and patriarchal attitudes and deep-rooted stereotypes regarding the roles, responsibilities and identities of women.³² Under Article 5 of CEDAW, Samoa is obligated to modify the social and cultural patterns of prejudice, customs, and other practices that are based on the idea of either sex's inferiority to the other or on stereotyped roles for men and women.³³ In view of this, a clear discussion of how *Fa'asamoa* influences the roles and responsibilities of women is necessary in understanding their status, and the disadvantage they may suffer because of this.

Roles and Responsibilities of Women

Within the village setting, women play three distinct roles that reflect their status. The *auluma* – the highest and most powerful status a woman can hold, on par with that of titled men – are the unmarried, divorced and widowed daughters of the village. Generally, once a woman marries, it is part of her responsibilities to serve her husbands' family and her status is lower (this is not in all cases, for example, if a woman marries a high chief, her status is elevated she becomes the head of the *auluma*). The *faletua* and *tausii* are the wives of the *matai*, the highest status for married women. The *ava a taulelea* are the wives of the untitled men, the lowest status. Traditionally, a wife's status is much less than that of a sister, and the status of a wife who marries and moves to her husband's family (*nofotane*) is much less than

³⁰ Samoa Bureau of Statistics (SBS), Population and Housing Census 2011 Analytical Report (2011 Census) at VI.

³¹ Anonymous Survey participant (School Consultations) in response to 'Three things about life in Samoa I would like to see changed'.

³² United 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].

³³ UN General Assembly, *Convention on the Elimination of All Forms of Discrimination against Women*, 18 December 1979, United Nations,

Treaty Series, vol. 1249, p. 13, available at: <http://www.refworld.org/docid/3ae6b3970.html> [accessed 23 June 2015] at Art. 5(a).

³⁴ There is also a male counterpart to this role called *faiava*.

³⁵ This was a common issue raised during our Village Consultations as well as during the consultation with Samoa Victims Support Group (SVSG) on 29 April 2015. *Nofotane* represent an especially vulnerable group. No local remedy means that she is not able to access traditional remedies through the village *fono*.

³⁶ Anonymous Survey participant, qualifying response located on file at the Office of the Ombudsman.

³⁷ Samoa Family Health and Safety Study (2007) available via

a wife who stays with her family.³⁴ During the village focus groups with women and girls, the issue of *nofotane* status was raised most often related to abuse suffered at the hand of her husband or mother-in-law, for which no local remedy was available.³⁵

✚ *“In the beginning God created man first, and appoint men to become leaders in any community, including family. However, it seems that more women are smarter and have better opinions and knowledge than men which makes women to become better leaders. But in tradition, men are higher than women. Jesus state that everyone must be equal.”* [sic]³⁶

Generally, it is accepted that men are the head of every Samoan family, which impacts the way women view themselves and their decision-making abilities. Further, Samoan men consider themselves superior to their wives, regardless of her education or socio-economic status.³⁷ The focus group discussions with women and girls indicated that the majority of participants believe that men are the only ones fit to make decisions at both the village and central government levels.³⁸ While Samoan women fulfil a wide and varied number of roles within their families, communities and churches, these are mostly confined to the domestic sphere. A woman's primary role and responsibility is to be a wife and child bearer, with her status tied to that of her husband's, unless she chooses not to marry.³⁹

Gender roles refer to society's concept of how men and women are expected to behave.⁴⁰ Gender roles and characteristics do not exist in isolation, but are defined in relation to one another through the relationship between women and men, girls and boys, and have specific implications in Samoan society.⁴¹ *Fa'afafine*, which literally means men who act in the manner of women,

is the third gender that has always existed in Samoa. Samoa, unlike many Pacific nations, is more advanced on the acceptance of a third gender. In fact, *Fa'afafine* are known for their hard work and dedication to the family in carrying out both roles and responsibilities for men and women. Given this, Samoa has the ability to transform and rise above stereotypical gender roles and work towards gender equality.

Conclusion: Gender role stereotyping disadvantages women in many areas of life, particularly *nofotane*, who tend to be the most disadvantaged status group. Breaking stereotyped roles and responsibilities for women is necessary in achieving gender equality. It is important to be reminded that “*E au le inailau a Tamaita'i*” (Legacy of women is one of total achievement).

Recommendation

- NHRI to launch Women's Rights Campaign in collaboration with MWCSO, MESC, Sui Tamatai o Nu'u (STN), and relevant NGOs to provide education about and raise awareness of gender role stereotyping and its effects on women, targeting both men and women at all levels of society, particularly in rural areas.**

RECOGNISING THE UNEQUAL PARTICIPATION IN POLITICAL AND ECONOMIC LIFE

Adherence to strict gender roles and stereotypes can be disempowering across many areas of life, which can lead to women's underrepresentation in political and economic spheres. For example, because women tend to be confined to domestic roles they are often excluded from decision-making processes both at Parliament and village levels as well as denied economic advancement, particularly in rural settings.⁴² Likewise, the CEDAW Committee is concerned at the underrepresentation of women at all levels of political and public life, in particular in Parliament, the judiciary, the diplomatic

the Secretariat of the Pacific Community, (2009). (SPC) at http://www.spc.int/hdp/index.php?option=com_docman&task=cat_view&gid=41&Itemid=44. See also The United Nations Entity for Gender Equality and the Empowerment of Women (UNWomen), 2014 Country Review Ending Violence in Samoa, on file at the Office of the Ombudsman.

³⁸ Village focus group qualifying data, notes on file with the Office of the Ombudsman.

³⁹ See generally Ending Violence against Women & Girls: Evidence, Data and Knowledge in the Pacific Island Countries: Literature Review and Annotated Bibliography August 2010 available at 2nd Edition, July

<http://www.unicefunwomenpacific.org/pacificislands/evawresources/uploads/embeds/file/UN%20Women%20Ending%20VAW%20Literature%20Review%202nd%20Edition.pdf> [accessed 29 May 2015].

⁴⁰ UN Human Rights Council, *Report of the Working Group on the issue of discrimination against women in law and in practice*, 2 April 2015, A/HRC/29/40, available at: <http://www.refworld.org/docid/5577ed8a4.html> [accessed 23 June 2015].

⁴¹ UN Human Rights Council, *Report of the Special Rapporteur on Violence against Women, its Causes and Consequences, Yakin Ertürk : addendum : 15 years of the United Nations SR on violence against women, its causes and consequences (1994-2009): a critical review*, 27 May 2009, A/HRC/11/6/Add.5, available at: <http://www.refworld.org/>

Case Study: Vaimasenu’u Zita Martel—The Queen of the Longboats

When women are allowed to break stereotypes, they can excel as great leaders. Take for example Zita Martel, a woman who knows many firsts—first female matai from her village, first female Honorary Consul of France, and Samoa’s first and only female Fautasi skipper. She has won numerous competitions in this traditionally male sport, including famously beating the faster fiberglass boats from American Samoa in 2006.

Fautasi racing was a calling she never expected to have; her church chose her as skipper of their boat. When the skipper association wrote a letter demanding her removal from the sport, her church fully supported her, and despite coming from a very traditional family, it was her mother’s advice that pushed her to rise to the challenge. Her story demonstrates how powerful it is when churches support women in gender-role defying activities and when mothers encourage daughters to discover their passions outside of the domestic sphere.

Of course, challenging traditional beliefs on the role of women was not easy and Zita is no stranger to gender discrimination. It took five to six years before she was socially accepted, and even praised, in the role. Despite consistently being at the top of her game, she had to endure criticisms like: “She’ll give up.” “She’s a woman; she’ll just sink the boat!” “Winning was a fluke.” “She’s just a girl.” Indeed, some of her worst critics were women, but she had grit and determination and simply told herself, “I’ll prove them wrong on the water.”

Zita’s story is more than just winning or making waves. She recognised early on that exposure to a woman skipper makes exposure to women in other non-traditional roles easier, particularly for the boys on the boat and those she teaches at Don Bosco Technical Centre. “I’ve made it my objective in life to grow beautiful young men into beautiful partners.” When asked why she wins, Zita always responds, “Love.”

docid/4a3f5fc62.html [accessed 23 June 2015].

⁴² See note 32 at para. 34.

⁴³ See note 32 at para. 26.

⁴⁴ Women in Parliament, Inter-Parliamentary Union and UNWomen (2012) available via THE GUARDIAN at: <http://www.theguardian.com/news/datablog/2012/mar/07/women-representation-in-politics-world-wide#data>.

⁴⁵ ‘Village Government in Samoa: Do women participate?’ The Centre for Samoan Studies (CSS) at the National University of Samoa (NUS), *Village Government in Samoa: Do women participate?*, 2014, available at: <http://samoanstudies.ws/wp-content/uploads/2014/07/Village-Government-in-Samoa.pdf> [accessed 23 June 2015].

⁴⁶ *Constitutional Amendment Act 2013*, s. 2, which amends Article 44 of the Constitution.

⁴⁷ See note 45 at 3.

⁴⁸ See note 30 at 50.

⁴⁹ See UN Committee on the Elimination of Discrimination Against Women (CEDAW), *General recommendation No. 25, on article 4, paragraph 1, of the Convention on the Elimination of All Forms of Discrimination against Women, on temporary special measures*, 2004, available at: <http://www.refworld.org/docid/453882a7e0.html> [accessed 23 June 2015] at para. 8 for discussion on substantive equality.

service, and other decision-making bodies in education, administration and the Cabinet.⁴³ In view of this, a clear discussion of underlying reasons behind the unequal participation of women in their decision making and wage earning abilities is necessary.

Political Life: Women as Decision Makers

Samoa ranks among the lowest in the world (131 out of 139) for women's political participation.⁴⁴ Since Samoa's independence in 1962, women have remained below 10% of parliamentarians.⁴⁵ In 2013, Parliament passed the *Constitutional Amendment Act* that requires a 10% (one in every 10) quota of women parliamentarians, an act for which it deserves praise.⁴⁶ Next year marks one of the most important election years in Samoa's history as the quota is enforced. The issue here is to uncover exactly why women are so underrepresented in leadership roles in Parliament and within village fonos.

Samoa's Parliament is based on a *faamatai* system that requires both men and women to hold a *matai* title. However, hardly any village-based *matai* are women.⁴⁷ According to the 2011 Census, only 11% of *matais* are female.⁴⁸ Therefore, while the requirement for a *matai* title applies equally to both men and women, it has a disproportionate effect on women because they are not bestowed titles equal to that of men. In order to get to the root cause of unequal participation, it is important to address the means of women's exclusion at the village level. The NHRI feels that unless decision making abilities for women are resolved at the village level,⁵⁰ the underrepresentation of women in Parliament will remain a challenge.⁵¹

At the village level, even when women are bestowed a *matai* title, they can still be restricted from being members of the village council and taking on a full decision making role. According to NUS, 41 village

governments expressly refuse to recognise female *matai*.⁵² In 34 villages, women *matai* are recognised, but not allowed to sit in village council meetings. The vast majority (79%) of women *matai* choose not to attend village council meetings, even if they are permitted.⁵³ It seems that informal means of discrimination are a factor here, such as feeling unwelcome in male-dominated environments, feeling uncomfortable by inappropriate jesting, and disliking insensitive discussion.⁵⁴ Additionally, as discussed in the previous section, women themselves feel that men should be the sole decision makers and may even find it disrespectful to sit in village council meetings.⁵⁵ Through the Office's village and Ministry consultations, it became evident that women need more confidence in their decision making abilities in order to participate politically at rates equal to men. In other words, if women are encouraged to lead (or even be involved) at the village level they will be confident to lead in Parliament.

Economic Life: Women as Wage Earners

The economic empowerment of women is crucial in elevating her overall status. As a point of pride, a high proportion of urban businesses in Samoa are owned or managed by women.⁵⁶ In Samoa, there are approximately equal ratios of women in executive and middle management positions within the public sector and the proportion of women in formal employment (excluding manual labour) is almost equal to men—one of the highest in the Pacific region.⁵⁷ However, while there are positives to highlight for urban women, rural women continue to be in especially disadvantaged positions as they lack the employment opportunities available to urbanised populations. The CEDAW Committee is concerned that women are concentrated in the informal sector for employment.⁵⁸ According to the International Labour Organisation (ILO), some of the characteristic features of informal employment are lack of protection

⁵⁰ For example, of the traditional villages, only 5 out of 240 have female *palenu'u* or village mayors. This means only 1 in every 50 villages have women leaders.

⁵¹ For example, even if the quota was raised to 50%, if women are not confident to run, it will make no difference in the composition of Parliament.

⁵² See note 45 at 5.

⁵³ *Ibid.*

⁵⁴ Consultation with MWCSO, 5 June 2015.

⁵⁵ See previous section. Special attention needs to be given to rural women because they seem to be the most apprehensive in taking on decision making roles. Demographically, the majority (80%) of Samoa's

female population live in rural areas, mostly in traditional villages.

⁵⁶ See note 45 at 1.

⁵⁷ *Ibid.*

⁵⁸ See note 32 at para. 30.

in the event of non-payment of wages, compulsory overtime or extra shifts, lay-offs without notice or compensation, unsafe working conditions and the absence of social benefits such as pensions, sick pay and health insurance. Women and other vulnerable groups of workers who are excluded from other opportunities have little choice but to take informal low-quality jobs.⁵⁹

Conclusion: It is very difficult for women to formally participate in village-based political decision-making because some traditional practices hinder or all together exclude them. The Samoan Government holds no power in determining the composition of village councils, their authority regarding women's participation as decision makers is limited.⁶⁰ The low rate of participation of women within the village thus translates into underrepresentation at the national level. It is also very difficult for rural women to participate in the formal economy. In order to elevate women's status overall, they must have access to earn proper wages.

Recommendations

- 2. MWCSO, the Office of the Attorney General (AGO) and the Samoa Law Reform Commission (SLRC), in consultation with NHRI, to consider the drafting of Guidelines for the Village Fono Act requiring Alii and Faipule to take into account women's participation in decision making within the village.**
- 3. Government to create genuine and durable partnership with WIBDI to promote broader uptake of its economic empowerment programmes, including its development model that focuses on families, particularly in rural areas.**

PREVENTING HIGH RATES OF VIOLENCE AGAINST WOMEN

The epidemic rates of violence against women in Samoa is a form of discrimination that comes about from the systemic undervaluing of women in Samoan society and their exclusion from decision making processes.⁶¹ Samoa Family Health and Safety Study found that almost half (46.4%) of women surveyed aged 15 to 49 reported experiencing physical and/or emotional and/or sexual violence by an intimate partner.⁶² There is a need to reverse these trends, specifically violence against women and girls, and turn what is otherwise a tragedy into an opportunity. Women hold significant value in Samoan society. 'Ole tuafafine ole 'i'oimata o lona tuagane' is a central principle of Fa'asamoa that a sister is the pupil of her brother's eye, although this relationship extends to non-related males and females also. Considering that sisters are to be protected, the high prevalence of violence against women in Samoa is intolerable from both a cultural standpoint as well as from a human rights perspective.

✦ *"I believe that the head of the household (man) has the right to abuse his wife even though I know it is not right. It was a belief we used to live with before the introducing of human rights."* [sic]⁶³

However, within the Survey and focus group data collected, many participants felt that Fa'asamoa and human rights particularly conflicted in this area, with many citing that Fa'asamoa permits husbands to beat their wives.⁶⁴ In the same vein, the CEDAW Committee expressed serious concern that violence, particularly domestic and sexual violence, against women appears to be: (1) socially legitimized, (2) accompanied by a culture of silence and impunity, and (3) insufficiently disaggregated with regards to data collection.⁶⁵ Based on the Survey results, the Office shares in these concerns.

⁵⁹ Correspondence with the International Labour Organisation (ILO) on file with the Ombudsman.

⁶⁰ The Village Fono Act officiates the existence and authority of village councils. However, it does not specify compositions of those councils as those matters are left to the villages themselves given their own *aga-i-fanua*.

⁶¹ See note 32. In 2005, Samoa was the first country in the Pacific region to complete a study on women's health and domestic violence, the results of which were published in the Samoa Family Health and Safety Study (2007).

⁶² See note 37.

⁶³ Anonymous Survey Participant in response to choosing not to report

abuse on file with the Office of the Ombudsman.

⁶⁴ See Annex C for Survey review of this issue.

⁶⁵ See note 32 at para. 22.

Case Study: WIBDI—Empowering Women, Families and Communities

Women in Business Development Inc. (WIBDI) is a renowned non-governmental organization in Samoa that has won many awards for its good work. WIBDI is dedicated to strengthening village economies with a development model that takes into account Samoan values, tradition and culture. It works with vulnerable populations to develop sources of income to increase self-reliance and independence, focusing on networking with communities, government and other organizations in Samoa and around the Pacific. It began its fine mat programme in the mid-1990s and witnessed an unfortunate trend. In areas where women were becoming the main income earner through their programme, there was a spike in domestic violence as a result. Women were being beaten because of the time they spent weaving instead of cleaning and doing other expected household activities. In response, WIBDI reframed their programme to include the husband as planter and harvester of the pandanus (weaving) plants while simultaneously sharing childcare and domestic duties with his wife so that she could weave.

Re-conceptualizing the programme as a family initiative allowed for the inclusion of everyone in economic empowerment: men as planters and harvesters, women as weavers, and children reaping the benefits of education and welfare from their parents' collective income. Allowing women to earn cash directly for their families changes communities. When women are allowed input into the economy, Samoa can flourish. The economic empowerment of women can do wonders for families, communities and this country.

The fact that families are able to use the resources they already have to earn an income locally and contribute to their small village economies is a laudable achievement for WIBDI, and one in which they have won international recognition for Samoa. Doing so requires very little funding and should be fully supported by Government Ministries. These types of partnerships between NGOs and the Government will promote greater uptake of economic empowerment programmes with a model that engages both men and women to empower families, which leads to sustainable social and cultural change in the long term.

The Social Legitimization of Violence Against Women

“There is tons of reasons why it is acceptable to beat up a woman. A wife is owned by her husband or a husband has authority over his wife the main reason why there is family quarrels is because the wife refuses to have sex with her husband. If she disobeys she must be beaten up. Same for her if she disrespects the husbands sisters and parents.”^[sic]⁶⁶

The automatic subordination of one gender to another allows for physical violence to become socially legitimized and unrecognized as a violation—even to the victim. Evidence suggests that violence against women is socially legitimized in Samoa. In every village consultation, this issue was raised and discussed, often without recognition that it is a violation of human rights.⁶⁷ According to a study conducted by the Secretariat of the Pacific Community (SPC), almost 70% of the women surveyed in Samoa believed that men have a good reason to beat their wives (including if she is unfaithful, does not do the housework well, or disobeys him), while about half of the men surveyed expressed that beating a partner is justified.⁶⁸ Given that the majority of women feel men’s violence towards them is justified, fighting against the normalization of violence within the home requires an approach focused on all genders, at all ages.

In the focus groups, women often (humorously) responded that they were most often beaten when they refused sex. From the Survey, adult females aged 36 and older were the group most likely to agree that there should be better access to birth control (71%).⁶⁹ Considering that sex leads to the conception of children, refusing sex in order to avoid pregnancy is understandable. However, according to a landmark study by the SPC in 2007, a

whopping 90% of men thought that not wanting to get pregnant is not an acceptable reason for refusing sex.⁷⁰ Obviously, this creates an impasse that may contribute to the high rates of domestic abuse in Samoan households. It is important to highlight steps taken by the Samoan Government to criminalise marital rape in the *Crimes Act 2013* to ensure this issue is addressed in the law.⁷¹

Culture of Silence and Impunity

“I was scared because if he knows that I report the abuse then he will kill me.”⁷³

Impunity is the exemption from punishment or freedom from the consequences of an action.⁷⁴ Since there is a widely held belief that family difference, such as domestic violence, should be settled within the family, it helps foster a ‘culture of silence’ on the issue within villages.⁷⁵ It is important to acknowledge that Samoa has taken measures to address this issue with the passage of the *Family Safety Act (FSA) 2013*, which provides for greater protection of families and the handling of domestic violence and related matters.⁷⁶

According to the Survey, a total of 39% of participants reported seeing abuse against women and girls in their village in the past year.⁷⁷ Although the actual rate of abuse is likely higher, especially considering that ending violence against women was one of the most common issues raised across all methods of the data collection for this Report.⁷⁸ Of those who reported seeing abuse, only one-quarter (25%) of them reported that abuse.⁷⁹ It was also raised during focus groups that one reason people do not report domestic violence is due to the lack of protections for those who report. It was stated: “*In a village setting, what if anything, is truly anonymous?*”⁸⁰ While the FSA provides for protection orders for victims, it provides no protections for those who report the abuse who are not the victims themselves, which may contribute to the low rates of reporting of domestic violence.

⁶⁶ National Church Council (NCC) Consultation, 12 March 2015.

⁶⁷ Village consultation and focus group data on file with the Office of the Ombudsman.

⁶⁸ See note 32.

⁶⁹ See Annex C for a full analysis.

⁷⁰ UNWomen, 2014 Country Review Ending Violence in Samoa, on file at the Office of the Ombudsman.

⁷¹ *Crimes Act 2013*, s. 49(4), which removes the specific exemption of marital rape contained in the *Crimes Ordinance 1961*.

⁷² Ephesians 5:25.

⁷³ Anonymous Survey Participant in response to choosing not to report abuse.

⁷⁴ ‘Impunity’ Def. 2. *Merriam Webster Online*, Merriam Webster, n.d. Web. 24 Sept. 2011.

⁷⁵ See note 32.

⁷⁶ *Family Safety Act 2013*, Part II (Protection Orders).

⁷⁷ See Annex C for full analysis.

⁷⁸ Survey responses, village consultations and focus groups all raised this issue.

⁷⁹ The Survey did not distinguish between formal and informal methods of reporting.

⁸⁰ Village Focus Group, unmarried women, notes on file with the Ombudsman.

⁸¹ See note 32 para. 22.

Case Study: Does Fa'asamoa permit a husband to beat his wife?

The traditional *Fa'asamoa* structure of a family is that a man heads the household, and in most cases, he is also the *matai*. The man is meant to provide, make decisions, care for and protect his family at any cost. While *Fa'asamoa* allows for a man to head the family and make decisions, it does *not* allow for him to beat his wife simply because of this authority. In fact, he is meant to make decisions based on the principles and values of *Fa'asamoa* for the betterment of his family—abuse in any form is *not* part of those principles and values.

Further, Samoa is founded on God, and as such, many *Fa'asamoa* principles align with Christian values. From a biblical viewpoint, a husband is to 'love his wife like Christ loved the church.' (Ephesians 5:25). Thus, if *Fa'asamoa* echos this Christian value, it means *Fa'asamoa* does not condone such actions. Having said this, it is time for Samoan society to reassess whether the perceived right of the husband to beat his wife is actually aligned with spiritual and cultural values. The NHRI stands strong in its view that *Fa'asamoa* does not permit a husband to beat his wife.

Case Study: Samoa Victim Support Group

Samoa Victim Support Group (SVSG) has for a decade provided the much-needed support and groundwork to combat domestic and other forms of violence in Samoa. They play a role that should belong to the Government, yet they receive minimal support from the Government. SVSG's original mission was to assist vulnerable victims of sexual crimes, but out of necessity it now provides integrated, personalised and professional service to all vulnerable survivors of crime. It has seen the pain, tears and heartache of many victims, but also the joy, confidence and belief in justice for those survivors of violence, which helps the organisation to continue to take a stand and make a difference in the lives of many.

“A strong, proud and successful community does not tolerate any form of violence against women or children.”

The Office approached SVSG as experienced helpers on the matters of domestic violence in Samoa and several issues were raised regarding concrete measures to be taken on ending violence against women and children. Firstly, there is no domestic violence shelter in Samoa. The House of Hope houses child victims of violence under 12, but a fully functioning shelter for families is a must—an issue commonly raised by international TMBs. Currently, SVSG has land to build such a shelter, but insufficient funds to do so. Furthermore, there are many hidden costs to SVSG's work such as the money needed for fuel, food and time to address the complex matters they deal with on a consistent basis. SVSG works tirelessly, around the clock and should be fully supported in its capacity needs to do so.

SVSG also indicated that nofotanes are the most vulnerable group, making up the majority of its casework. They asked, “Where are these women's human rights?” Families and communities need to be educated in order to prevent the systemic disenfranchisement and abuse of this population. SVSG's important role is widely recognised and respected. In fact, its anger management course received 115 referrals from court (all males) since its inception. The course has been so successful that it has had only one reoffender. If the Government is using SVSG's programmes through its court system, it must also support the organisation via funds to do its work.

Insufficient Disaggregation of Data

The lack of information and statistical data regarding the high prevalence of violence and its nature, extent and causes is a major concern⁸¹ and contributes to lack of enforcement around it. It was particularly disconcerting that the data made available by the Domestic Violence Unit (DVU) of the Ministry of Police (MOP) was scant and insufficiently disaggregated.⁸² A government cannot claim to be dedicated to ending violence against women if its 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.⁸³

Conclusion: While the human rights system—laws, policies, and conventions—can be used to hold Samoa accountable for obligations undertaken pursuant to treaties, laws can only go so far. Change has to be felt in the culture as well as the legal code. The culture of indifference to violence towards women that clearly prevails in Samoan communities must be dismantled if the pedestal on which the *Fa’asamoa* places women does not disintegrate into mere embarrassing rhetoric.

Recommendations

- 4. Government to provide dedicated funds and adequate assistance to all NGOs working on the protection of families, especially in rural areas, in cooperation with DVU. In particular, priority must be given to building a Family Violence Shelter in collaboration with SVSG to meet the needs of victims of violence.**
- 5. AGO and SLRC to consider reviewing the *Family Safety Act 2013* for the inclusion of protections for persons who report incidence of violence, including sexual violence.**

⁸² Despite several attempts from the Office we were 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.

⁸³ See note 32 para. 23.

⁸⁴ See note 30 at 17. The official age for children is 0 to 17 years and youth is 18 to 35 years. It is important to recognise that under *Fa’asamoa* a person retains the obligation to be obedient to parents so long as their parent is alive; however, pursuant to Article 1 of the CRC, for the purposes of the Convention a child means every human being be-

- 6. NHRI and DVU to enter into a Memorandum of Understanding (MOU) to regularly collect statistical data on domestic and sexual violence disaggregated by sex, age, region (urban/rural), and relationship between victim and perpetrator, to be reported on a quarterly basis directly to NHRI.**

3.1.2 OUR CHILDREN

In Samoa, nearly half (48.9%) of the population is youth aged 19 and under, of which over one-third (38.3%) are under the age of 14.⁸⁴ As such, children and youth represent a significant interest group in Samoan society. Children are the innovators and leaders of tomorrow and the future custodians of family land and assets.⁸⁵ They deserve to be nurtured, educated and protected—this is the collective responsibility of families and communities. Unfortunately, this is not always the case. From the Survey and research, several issues arose that must be addressed at local and national levels: (1) **correcting the misunderstanding about the rights of the child**, (2) **providing access to adequate education**, (3) **addressing child labour and** (4) **preventing abuse, including sexual abuse and incest.**

CORRECTING THE MISUNDERSTANDING ABOUT THE RIGHTS OF THE CHILD

✦ *“I have the right on everything and I can do whatever I want even if anyone stop me.”* ^[sic]⁸⁶

*“Human rights will make children think they can tell their parents they don’t want to go to school.”*⁸⁷

low the age of eighteen years. UN General Assembly, *Convention on the Rights of the Child*, 20 November 1989, United Nations, Treaty Series, vol. 1577, p. 3, available at: <http://www.refworld.org/docid/3ae6b3f0.html> [accessed 24 June 2015].

⁸⁵ 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 9.

⁸⁶ Quote from qualitative Survey of church leaders located on file at the Office of the Ombudsman.

⁸⁷ Quote from village consultation focus group, located on file at the Office of the Ombudsman.



WOMEN FOCUS GROUP DISCUSSIONS IN THE VILLAGE OF SASINA, SAVAII, 12 MARCH 2015.



SCHOOL SURVEY AT ITU O ASAU COLLEGE, 12 MARCH 2015

Village and church leader consultations indicated widespread misconceptions about the implications of human rights for Samoa's children. From these consultations, there appears to be three factors contributing to the misconception of children's rights. First, one of the most commonly raised concern in focus group discussions was that human rights give children the freedom to misbehave and disobey their parents, which may be a result of the translation of the term 'human rights.'⁸⁸ Second, 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. Third, children themselves have misunderstood what their rights are, which further adds to the concerns raised by parents.⁸⁹

In recognising this issue, the Committee on the Rights of the Child (CRC Committee) encourages Samoa to raise awareness of the Convention among adults and children alike.⁹⁰ Article 5 of the CRC states that governments should respect the rights and responsibilities of families to direct and guide their children so that, as they grow, they can use their rights properly.⁹¹ It encourages parents to deal with rights issues "in a manner consistent with the evolving capacity of the child" and places on governments the responsibility to protect and assist families in fulfilling their essential role as nurturers of children.⁹² Most importantly, the Convention does not take the responsibility for children away from their parents and give that authority to governments.⁹³

Recommendation

7. Dispel the misconception about the rights of the child for both parents and children through community education campaigns and programmes led by the NHRI in collaboration with MWCSO, MESC, and relevant NGOs.

PROVIDING ACCESS TO ADEQUATE EDUCATION

The CRC places a high value on education⁹⁴ and the CRC Committee recommends that the Government increase public expenditure in education and to strengthen its efforts to improve the quality of education.⁹⁵ Samoa is on track to meet Millennium Development Goal (MDG) 2 on achieving universal primary education.⁹⁶ Accordingly, it is important to acknowledge that Samoa has demonstrably achieved universal primary education through the Samoa School Fee Grant Scheme (SSFGS), which replaces the school fees levied on families with a government administered grant scheme that has demonstrated an increase in primary school enrolment⁹⁷ and retention.⁹⁸ Further, Samoa has gone above and beyond its obligations under the CRC and has extended the SSFGS to years 9 through 11 of secondary education.⁹⁹ Despite these positive efforts, access to education is still restricted via the hidden costs of education and increasing drop-out rates.

The Hidden Costs of Education

A common theme among the qualitative responses to the Survey was ensuring free education for all. Article 28 of the CRC covers the right to education and Samoa currently retains a reservation to make primary education compulsory and available free to all.¹⁰⁰ However, there is a need to distinguish between fee-free education and free education because there is no such thing as completely free education according to MESC.¹⁰¹ SSFGS provides only for fee-free education, which covers the tuition fees, books and stationary costs. The major issue here is the hidden costs of education such as registration fees, uniforms, transportation, lunches, etc. that still act as a barrier to education, especially in the rural areas. As a result, children in poor, rural families are not attending school.¹⁰² This is a gap that must be addressed collectively because it is unsustainable for the Government to bear all costs of education. Families must also take responsibility in the education of their children.

⁸⁸ See 'Fa'asamoa and Human Rights' section at 6 (for discussion on the translation of human rights).

⁸⁹ Corroborated at MWCSO consultation, 5 June 2015. Results from School Survey, located on file at the Office of the Ombudsman.

⁹⁰ 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://refworld.org/docid/45c30bc00.html> [accessed 23 June 2015] at para. 23.

⁹¹ See note 84 at Article 5.

⁹² *Ibid.*

⁹³ UNICEF, *Fact Sheet: A summary of the rights under the Convention on the Rights of the Child*, available at <http://www.unicef.org/crc/files/>

[Rights_overview.pdf](#) [accessed 23 June 2015] at 1.

⁹⁴ See note 84 at Articles 28 and 29. See also note 93 at 3.

⁹⁵ See note 90 at para. 7.

⁹⁶ United Nations Development Programme (UNDP), *Millennium Development Goal (MDG) overview for Cook Islands, Niue, Samoa and Tokelau*, available at: <http://www.ws.undp.org/content/samoa/en/home/mdgoverview/overview/mdg2.html> [accessed 25 June 2015].

⁹⁷ *Education Act 2009*, s. 4; The national schooling participation rate for children aged 5 to 14 has been above 90% since 2005, which is compulsory for this age group.

⁹⁸ UNICEF Pacific Office, *Samoa: A Situational Analysis of Children, Women and Youth*, Fiji (2006) at 54.

Increasing Dropout Rates

🚩 *“Take children to school for a better future of the family.”¹⁰³*

MESC and MWCS D highlighted difficulties that some students have (particularly boys) with finding relevance in secondary schooling, which contributes to low enrolment rates.¹⁰⁴ Participation rates for ages 15 to 19 have remained below 60% since 2005 and were reported at 56% in 2014.¹⁰⁵ Dropout rates for all secondary schools are high with Year 12 – Year 13 recording the highest rate.¹⁰⁶ This is no surprise considering that SSFGS assistance currently ends at Year 11. MESC is introducing Technical, Educational and Vocational Training (TVET) programmes in secondary schools as a way to address this¹⁰⁷ and these programmes should be supported.

🚩 *“Pregnant teenagers must be able to sit their school exams.”¹⁰⁸*

Additionally, some of the Survey responses mentioned the issue of pregnant girls being prevented from attending school through pressures to drop out.¹⁰⁹ Approximately 1 in every 25 babies born in Samoa is born to a mother aged 15 – 19¹¹⁰ and the rates of teen pregnancy are increasing.¹¹¹ This is a human rights issue because the denial of education for pregnant girls is a form of gender discrimination as often it is only the girl that bears the onus of that discrimination (e.g. the father does not face the same pressures to drop out of school during and after the pregnancy). There is a need to 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.

ADDRESSING CHILD LABOUR

Since Samoa’s last CRC review, the Government has achieved many of the recommended changes related to the economic exploitation of children.¹¹² It passed the *Education Act 2009*, which regulates the employment of school-aged children; it became a member of the ILO, and ratified all 8 fundamental Conventions, including the Worst Forms of Child Labour.¹¹³ Samoa advanced efforts on the elimination of the worst forms of child labour when it enacted the *Labour and Employment Relations Act 2013*, which raised the minimum age for hazardous work to 18; a corresponding list of hazardous occupations is also being developed to ensure effective implementation of this provision.¹¹⁴ It has also sought technical assistance from ILO and has taken steps to ensure a national approach to tackling child labour, such as the setup of a Child Labour Taskforce.

🚩 *“Children selling goods at market during school hours.”¹¹⁵*

“Discourage parents from sending their children to sell things in the market.”¹¹⁶

However, a common issue Survey participants identified that needs to be addressed is children as street vendors. Many children themselves indicated that one of the things they would like to see changed in Samoa is: “kids selling goods at the market.”¹¹⁷ According to the *Education Act 2009*, compulsory school aged children¹¹⁸ are not to engage in street trading, or any other work of any kind, during school hours.¹¹⁹ Further, the Act sets up enforcement measures through the ‘attendance officers’ comprised of *Sui o Nuu*, school committees, and police officers.¹²⁰ 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

⁹⁹ Samoa School Fee Grant Scheme (SSFGS) covers all government, mission and special schools. It does not cover costs for private schools, which is not required under the CRC.

¹⁰⁰ See note 84 at Art. 28, para.1(a).

¹⁰¹ Consultation with the Ministry of Education (MESC), 8 June 2015.

¹⁰² MESC, *Education Sector Plan (July 2013 – June 2018)* at 25.

¹⁰³ Quote from qualitative responses to school children Survey located on file at the Office of the Ombudsman.

¹⁰⁴ See note 102 at 26.

¹⁰⁵ MESC, *Educational Statistical Digest 2014*, available at: http://www.mesc.gov.ws/pdf/Stats%20Digest%20Draft%202014_FINAL_Core.pdf [accessed 25 June 2015] at 11.

¹⁰⁶ *Ibid.* at 15.

¹⁰⁷ See note 102 at 26.

¹⁰⁸ Quote from qualitative responses to school children Survey located on file at the Office of the Ombudsman.

¹⁰⁹ See e.g. Letter to the Editor, SAMOA OBSERVER, available at: <http://www.samoaoobserver.ws/opinions/letters-to-the-editor/12270-teen-age-pregnancy-a-social-challenge> [accessed 24 February 2015] at 15.

¹¹⁰ See note 30 at VI.

¹¹¹ 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.

¹¹² See note 90 at para. 55.

Case Study: Emerging Child Labour Issues at Olomanu Juvenile Detention Centre

In January 2015, the NHRI undertook its first prison inspection and identified the labour carried out by detainees under the age of 18 at Olomanu Juvenile Detention Centre as an issue. According to some detainees, they are required to work twice a day (morning and evening) for more than 8 hours a day. However, it should be noted that prison authorities stated that detainees only work 6 hours a day.¹²¹ Detainees told the Inspection Team that at times they would be required to work during scheduled breaks or when they were sick. While detainees may tend to exaggerate complaints, the physical evidence of the work they do at Olomanu speaks for itself. The 300 acres of well kept taro plantings is not only impressive by any standard, it puts to shame—by perhaps thirtyfold—the plantation efforts of the Tafaigata main prison. Olomanu is planted and maintained by only 20 to 30 juveniles. The Team notes the report from SPCS that the labour routine is working well from a rehabilitation perspective; however, it is important that the CRC is also upheld. Further, it was the view of the Team that the facility did not place sufficient focus on the education, vocational training and rehabilitation needs of the juvenile detainees. This practice is not in accordance with CRC and may amount to child labour.¹²² It is recommended that labour hours be reduced to 4 hours a day and the remaining time be spent on education, vocational training and rehabilitation activities to allow the detainees the opportunity to reintegrate into society.

¹¹³ 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>.

¹¹⁴ MCIL is developing a list of hazardous occupations in which children under the age of 18 must not be employed (e.g. working that includes the use of pesticides, asbestos, etc.); enforcement of this provision is to

be monitored by MCIL.

¹¹⁵ Quote from qualitative responses to school children Survey located on file at the Office of the Ombudsman.

¹¹⁶ *Ibid.*

¹¹⁷ *Ibid.*

¹¹⁸ See note 97 at s. 20 (applies to children between ages 5 and 14).

¹¹⁹ *Ibid.* at s. 20. This extends to any other time if the work prevents or interferes with the child's attendance or participation in school.

¹²⁰ *Ibid.* at s. 15 and 16.

¹²¹ The Office notes this discrepancy and reports both sides of the issue in order to maintain impartiality.

¹²² See note 84 at Art. 32.

hours.¹²³ The issue here is to unpack why child street vending is still a challenge despite the regulatory efforts to prevent it.

Child labour is largely driven by vulnerabilities caused by poverty and deprivation.¹²⁴ 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 responsibilities for their families' livelihoods—sometimes as the sole breadwinner—as was the case for half¹²⁵ of the child vendors profiled in MWCSA's Child Vendor's Pilot Study 2005.¹²⁶

Article 32 of the CRC provides that a child has the right to be protected from economic exploitation that can interfere with the child's education.¹²⁷ Thus, the NHRI recognises the potential of education to break intergenerational cycles of poverty. In other words, unless the Government deals with the broader issue of poverty¹²⁸ and unless families are empowered to choose education over exploitative labour, this issue will continue to be a challenge.

Recommendations

8. To use education as a means to combat poverty, the Government, communities, and families must address barriers to education (e.g. hidden costs, child labour) through the recognition of a collective responsibility for the welfare of children:

- a. Government to ensure SSFGS is continued and sustainable, extended through Year 13, and to consider increasing public expenditure on education in general
- b. Communities, particularly 'attendance officers', need to take a more active role in preventing child street vending
- c. Families to prioritise the education of their children

¹²³ See note 111 at 45.

¹²⁴ 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.

¹²⁵ This figure refers to 5 out of the 10 total children that were profiled.

¹²⁶ See note 111 at 59.

¹²⁷ See note 84 at Art 32.

¹²⁸ See note 124 at 9. This entails addressing social and economic disparities through social protections such as livelihoods assistance and access to social services.

¹²⁹ See note 90 at para. 43.

9. MESC to take steps to reduce dropout rates in secondary schools via:

- a. Prevent initial dropouts of pregnant girls by working towards eliminating all negative social and cultural attitudes towards teenage pregnancy within schools and provide counselling to pregnant students enable them to re-enter and finish their education
- b. Reduce the dropout rates, particularly for boys, by expanding vocational programmes like TVET in secondary schools, ensuring their availability in both urban and rural areas

PREVENTING ABUSE, INCLUDING SEXUAL ABUSE AND INCEST

The CRC Committee stresses the need for Samoa to ensure that every child is protected from all forms of physical, sexual and mental violence.¹²⁹ Specifically, Article 19 of the CRC directs the Government to ensure that children are properly cared for and protected from violence, abuse and neglect by their parents or anyone else who cares for them.¹³⁰ Based on the Survey and outreach results, three issues related to the prevention of violence against children were identified: (1) abuse within the family and village, (2) abuse within schools, and (3) sexual abuse and incest.

Abuse within the Family and Village

Over one-third (34%) of Survey respondents 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.¹³¹ For example, in village focus groups, 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

¹³⁰ See note 84 at Art 29. See also note 93 at 3.

¹³¹ Please see Annex C for a full analysis. The Survey defined abuse as treatment of a person with physical or emotional cruelty or violence, especially regularly or repeatedly.

¹³² 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."

¹³³ For example, many village participants paraphrased Proverbs 13:24, "Spare the rod, spoil the child."

¹³⁴ Quote from qualitative responses to school Survey located on file at the Office of the Ombudsman.

train the child in the way s/he should go.¹³² Viewing this issue from cultural and social standpoint, child rearing in Samoa is strongly influenced by cultural and Christian practices and values.¹³³ Thus, if the child does disobey the parents or elders, it is common that they are physically and verbally disciplined.

🌿 *“Abuse against children is still happening today within the villages, people don’t care because of the Fa’asamoa.”*¹³⁴

This is supported by the findings of MWCSO’s *Child Protection Baseline Report for Samoa 2013* (CPBR) where an overwhelming majority (77%) of caregivers surveyed used physical (corporal) punishment and over half (51.4%) of children surveyed experienced physical punishment in the past year.¹³⁵ The most common types of physical violence are hitting, smacking, and slapping and the most common implements for hitting are hands and sticks.¹³⁶ In terms of verbal abuse, almost half (46%) of adults surveyed state that a child within the household has talked to them about being called an inappropriate name by an adult within that household.¹³⁷ The majority of names consist of general swearing following by the words “stupid” or “lazy.”¹³⁸ Almost three-quarters (74%) of children indicated that this made them feel angry, sad, unsure, uncomfortable or scared.¹³⁹ Indeed, school children who took the Survey used for this Report indicated that child abuse is common in villages¹⁴⁰ and that they dislike it.¹⁴¹

🌿 *“Abuse against boys and girls must be stopped because it leads to problems such as suicide.”*¹⁴²

*“Enforcement of children’s rights can result in less depression and trauma for children as abuse can affect ones mental state.”*¹⁴³

Noting the sensitivity around the matter, it is important to highlight that CRC does not take away the right of parents to discipline their children.¹⁴⁴ However, any form of discipline involving violence is unacceptable.¹⁴⁵ While the CRC does not specify particular punishments that are appropriate for parents to use, the CRC Committee is clear that parental guidance must not take the form of violent or humiliating discipline as the child must be protected from all forms of physical and mental violence.¹⁴⁶ Specific definitions of what is considered excessive or abusive is left to national law. Under the *Infant Ordinance Act 1961*, wilful ill-treatment of a child likely to cause unnecessary suffering or injury is an offence punishable by fine or imprisonment.¹⁴⁷ Specifically, Section 14 of this law recognises the rights of parents and other caretakers to administer ‘reasonable punishment’ to a child under their care, but it does not define what is reasonable.¹⁴⁸ The issue here is to distinguish between punishments that are considered discipline versus punishments that are excessive and considered as abuse, or in terms of national law, what is considered reasonable and unreasonable punishment.

🌿 *“Discipline good but there should be a limit.”* [sic]¹⁴⁹

*“Kids must be disciplined with words of wisdom.”*¹⁵⁰

The norm of hitting as a form of physical punishment in Samoa makes the line between discipline and abuse blurred.¹⁵¹ Children and parents often accept violent punishment as a norm for discipline, not realising it as abuse. While in some circumstances it is understandable for parents to smack their children, it seems that physical discipline can go too far and seriously hurt the child. Indeed, a child surveyed for this Report indicated that they had witnessed parents “almost killing their three children.”¹⁵² Additionally, the SLRC has outlined a number of court cases where children have died at the

¹³⁵ MWCSO, *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.

¹³⁶ *Ibid.* at 18.

¹³⁷ *Ibid.*

¹³⁸ *Ibid.*

¹³⁹ *Ibid.* at 17.

¹⁴⁰ It is unclear if the abuse they are experiencing is being described as occurring at home or within the school or both.

¹⁴¹ School Consultation qualitative data located on file at the Office of the Ombudsman.

¹⁴² Quote from qualitative responses to schools Survey on file at the Office of the Ombudsman.

¹⁴³ *Ibid.*

¹⁴⁴ See note 84 at Art. 19.

¹⁴⁵ *Ibid.* For further explanation see note 93 at 2.

¹⁴⁶ See UN Committee on the Rights of the Child (CRC), General comment No. 8 (2006): *The Right of the Child to Protection from Corporal Punishment and Other Cruel or Degrading Forms of Punishment* (Arts. 19; 28, Para. 2; and 37, *inter alia*), 2 March 2007, CRC/C/GC/8, available at: <http://www.refworld.org/docid/460bc7772.html> [accessed 25 June 2015].

¹⁴⁷ *Infant Ordinance Act 1961*, s. 12.

hands of parents administering corporal punishment.¹⁵³ These are obvious instances where physical discipline went too far. It is less obvious where to draw the line outside of these extreme instances, and this is still up for social debate. The NHRI believes that forms of discipline that readily employ violence harms children and should be considered excessive and abusive, and in terms of national law, defined as unreasonable punishment.

There are ways to discipline children that are effective in helping them learn about family and social expectations for their behaviour—ones that are non-violent and appropriate to the child’s level of development and that take into consideration the best interests of the child.¹⁵⁴ In fact, discipline within a cultural context does not condone excessive physical punishment that can be defined as abuse. As a Samoan proverb says, *O fanau a manu e fafaga i fuga o laau, ae o tama tagata e fafaga i upu ma tala* (Birds feed their chicks with twigs and berries but humans feed their children with words). In this way, *Fa’asamoa* encourages teaching children through words rather than violence.

Recommendation:

10. Government to consider the definition of ‘unreasonable punishment’ within the Child Care Protection Bill to align with CRC principles that any form of discipline involving violence is considered excessive and abusive.

Abuse within Schools

“I enrolled my daughter in a private school to avoid mistreatment from teachers as it is against school policies. I see domestic abuse against children every week in town, on roads, shops and in my village.”¹⁵⁵

The *Education Act 2009* bans the use of corporal

punishment.¹⁵⁶ Further, MESC prepared “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.¹⁵⁷ 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 this is necessary.¹⁵⁸ Almost one-fifth (18%) of Survey respondents for this Report witnessed or experienced corporal punishment in schools within the past year¹⁵⁹ and many students indicated that corporal punishment persists and asked teachers to stop this practice. In MWCS’s CPBR, 41% of children surveyed indicated a teacher had physically hurt them in the past year.¹⁶⁰ 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.¹⁶¹

“Change the normalities in school that it’s okay for a teacher to beat up a student.”¹⁶²

The NHRI wishes to highlight that MESC 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.¹⁶³ It is also meant 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 MESC to advocate for its establishment.

Recommendation:

11. MESC to step up efforts to enforce the ban on corporal punishment in schools.

¹⁴⁸ See note 85 at 13.

¹⁴⁹ Quote from qualitative Survey of school children located on file at the Office of the Ombudsman.

¹⁵⁰ *Ibid.*

¹⁵¹ See note 111 at 53.

¹⁵² Quote from qualitative responses to schools Survey located on file at the Office of the Ombudsman.

¹⁵³ See note 85 at 9-10.

¹⁵⁴ See note 84 at Art. 19. For further explanation see note 93 at 2.

¹⁵⁵ Quote from qualitative responses to village Survey located on file at the Office of the Ombudsman.

¹⁵⁶ See note 97 at s. 23.

¹⁵⁷ See note 135 at 32.

¹⁵⁸ 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 MESC to develop the National Safe Schools Policy and corresponding implementation plan.

¹⁵⁹ See Annex C for a full analysis.

¹⁶⁰ See note 135 at 18.

¹⁶¹ *Ibid.* at 32.

¹⁶² Quote from qualitative responses to schools Survey located on file at the Office of the Ombudsman.

Sexual Abuse and Incest

“Men raping their own daughters.”¹⁶⁴

The CRC Committee also voiced serious concern over the abuse of children, including sexual abuse within the family.¹⁶⁵ The NHRI shares in this concern because, while not asked directly, a number of school Survey respondents still indicated that sexual abuse and incest are taking place.¹⁶⁶ This is corroborated by MOP and Court records indicating a “relatively high number of offences of incest and sexual offences affecting children.”¹⁶⁷ The data currently available on this issue is scant and inadequately disaggregated.¹⁶⁸ This Office requested (numerous times), but never received data on the issue from the Criminal Investigations Division (CID) of MOP.¹⁶⁹ Thus, data related to this issue is drawn solely from SVSG as their caseload includes victims of sexual abuse and incest. Since the establishment of the House of Hope, SVSG has housed over 100 children who have been victims of incest.¹⁷⁰

Sexual abuse and incest is a practice that is condemned across the board by human rights law as well as national law.¹⁷¹ It is also condemned within *Fa’asamoa* because it represents a total breakdown of the responsibility of the *aiga* – mothers, fathers, uncles, aunties, grandparents and other relatives – to protect and safeguard children.¹⁷² 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. With regards the lack of data, it is likely that incest is underreported due to the taboo nature of the issue and the fear and shame that victims may feel as a result. In Samoa, the issue of broader family reputation plays a role in underreporting, which can silence the child victim and protect the adult perpetrator.¹⁷³ Indeed, anecdotal evidence suggests that where reporting of such issues goes through the village *fono* the result may be action against the person or family reporting rather than against the perpetrator.¹⁷⁴

The Survey indicated that young kids are not aware of where to report child abuse or incest,¹⁷⁵ which indicates a lack of awareness of the laws already in place to support victims. For example, 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 and how to engage in the legal proceedings it entails. A more systematic analysis of sexual abuse and incest is necessary¹⁷⁶ and relevant authorities must commit to regular collection and reporting of disaggregated data on these matters as recommended by MWCSO¹⁷⁷ and SLRC.¹⁷⁸

Recommendations:

12. MWCSO and MJCA, in consultation with NHRI, to work with the village *fono*, relevant authorities and engaged NGOs to increase public awareness of the Family Safety Act and how to engage in its legal proceedings.
13. NHRI, in collaboration with MWCSO’s Child Protection Unit and CID, to investigate and develop child-friendly reporting avenues for child abuse, sexual assault and incest.
14. NHRI and CID to enter into a Memorandum of Understanding (MOU) to establish a system for the regular collection of statistical data on 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.

¹⁶³ MESC Consultation, 8 June 2015.

¹⁶⁴ Quote from qualitative responses to schools Survey as something the child wished to see changed in Samoa, located on file at the Office of the Ombudsman

¹⁶⁵ See note 90 at para. 42.

¹⁶⁶ Qualitative Survey data – villages and schools, on file at the Office of the Ombudsman. This issue came out as significant due to the fact that it was reported to the Office despite never outwardly asking about the issue. The Survey never defined sexual abuse nor did it ask specific questions on the issue.

¹⁶⁷ See note 111 at 68.

¹⁶⁸ See note 85 at 29.

¹⁶⁹ The Office originally requested this data from DVU, but was told that because the issue is a criminal one, such data is only collected by the Criminal Investigations Division. The original data requests to DVU were sent in December 2014, with follow up in January, February, March, and May 2015 with no response.

¹⁷⁰ SVSG Consultation, 1 May 2015

¹⁷¹ See e.g. note 84 at Art. 19 and Art. 34. See also *Crimes Act 2013*, s. 55.

¹⁷² See note 111 at 19.

¹⁷³ SVSG Consultation, 1 May 2015.

¹⁷⁴ *Ibid.*

¹⁷⁵ From qualitative responses to schools Survey located on file at the

Case Study: Justice Vui Nelson

Justice Vui Nelson has over 35 years of legal experience and has been a staunch advocate for the rights of the child, so much so that he was elected to sit on the Committee on the Rights of the Child (CRC Committee) last year. He also serves as a Sitting Judge of the Supreme Court of Samoa. He has a well-established track record of child advocacy, including instituting the first Pacific-based Young Offenders Act 2007 as well as the *Community Justice Act 2008*.

He recognises that the CRC journey has not been smooth and that it probably never will be, whether in Samoa or elsewhere. However, he also acknowledges that implementation of the CRC is perhaps the greatest moral imperative of this generation:

“We are living in an age where the rights guaranteed by the CRC are in danger of not merely erosion but extinction. These are the very things the CRC was designed to combat. A war is being fought on many fronts for the minds and souls of our children. In Samoa no less so than elsewhere.”

As such, appointment of one of Samoa’s very own justices to the CRC Committee is all the more reason for Samoa to fully observe the Convention.

3.1.3 OUR PEOPLE WITH DISABILITIES

🚩 *“Ever[y] people was created by God’s image so we are all equal under God’s eye. People even disabilities are the same.”¹⁷⁹*

Almost one-third (30%) of participants reported having a family member with a disability,¹⁸⁰ which is a significant portion of the Survey population. According to the 2011 Census, PWDs are at least 2.2% of the total population.¹⁸¹ The Survey corroborates this as 60 total participants self-identified as having a disability (2.4%).¹⁸² PWDs include those who have long-term physical, mental, intellectual or sensory impairment which in interaction with various barriers may hinder their full and effective participation in society on an equal basis with others.¹⁸³ From the Survey and research, two interrelated issues have surfaced that must be considered at village and national levels: (1) **addressing the fundamental lack of awareness around equal participation of persons with disability and (2) facilitating all forms of access for persons with disability.**

🚩 *“This segment of society is largely ignored, alienated misunderstood and victimised by limited or no understanding on the part of caretakers.”¹⁸⁴*

Samoa should be commended for signing the CRPD on 25 September 2014 and for taking steps to become a full State Party to the Convention.¹⁸⁵ The CRPD seeks to promote and protect the rights of PWDs and ensure they have equal opportunity and enjoyment of human rights and freedoms in all spheres of life.¹⁸⁶ The AGO is currently undertaking a legal compliance review to support CRPD implementation and MWCS D has conducted a comprehensive mid-term review of the 2011 – 2016 National Policy for Persons with Disabilities addressing where further progress is required in

supporting their rights and equal participation in society. MWCS D has demonstrated progress in raising awareness and delivering community outreach on the rights and needs of PWDs, but more must be done in this area.¹⁸⁷

ADDRESSING THE FUNDAMENTAL LACK OF AWARENESS AROUND EQUAL PARTICIPATION OF PERSONS WITH DISABILITIES

🚩 *“They could barely do anything and they can’t think straight.”¹⁸⁸*

“They don’t deserve to be loved.”¹⁸⁹

“Equality is not the solution based on their capabilities but there’s a need for more care for [PWDs].”¹⁹⁰

Only 60% of the Survey respondents consider PWDs to have the right to participation in society on an equal basis with others.¹⁹¹ Interestingly, surveyed men aged 36 and over were the most in favour (74%) of equal rights to participation for PWDs.¹⁹² However, in the qualitative data and focus group 26 discussions, there was a general lack of awareness around the concept of equal participation and its implications for PWDs. For example, while many agreed that PWDs have the right to participate on an equal basis with others, when asked about specific participation examples, such as the right to marry, almost all participants felt PWDs should not marry.¹⁹³ Further, in focus group consultations with parents of children with intellectual disabilities, participants agreed that there exists a general lack of awareness for the rights of PWDs.¹⁹⁴ MWCS D shares in this view highlighting that greater awareness needs to be created, particularly in rural and remote areas.¹⁹⁵ It is the NHRI’s view that awareness-raising throughout society is needed, including at the family level, in order to foster respect for the rights and dignity of PWDs.¹⁹⁶

Office of the Ombudsman.

¹⁷⁶ MWCS D 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.

¹⁷⁷ MWCS D, 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.

¹⁷⁸ See note 85 at 29.

¹⁷⁹ Quote from village consultations located on file at the Office of the Ombudsman.

¹⁸⁰ See Annex C for full analysis.

¹⁸¹ See note 30 at 104.

¹⁸² See Annex C for full analysis.

¹⁸³ UN General Assembly, Convention on the Rights of Persons with Disabilities (CRPD): resolution / adopted by the General Assembly, 24 January 2007, A/RES/61/106, at: <http://www.refworld.org/docid/45f973632.html> [accessed 23 June 2015]; at Art. 1.

¹⁸⁴ Quote from village consultations located on file at the Office of the Ombudsman.

so that 100% agreement on their right to participate in society on an equal basis with others is reached.

FACILITATING ALL FORMS OF ACCESS FOR PERSONS WITH DISABILITIES

🚩 “Samoa needs to improve public facilities and services to make it accessible to people with disabilities.”¹⁹⁷

In order for PWDs to participate fully in all aspects of life, the Government must take appropriate measures to facilitate all forms of access, on an equal basis with others, to the physical environment, transportation, information and communication, and to other facilities¹⁹⁸ and services open or provided to the public, both in urban and rural areas.¹⁹⁹ Unfortunately, the NHRI does not have the capacity to carry out a full comprehensive review of accessibility to the physical environment in Samoa for PWDs. Instead, this section will focus on two crucial issues commonly identified among Government Ministries and NGOs as effective measures to ensure access and participation of PWDs on an equal basis with others—education and employment.²⁰⁰

With regards to education, the CRPD requires the government to ensure PWDs can access an inclusive, quality and free primary and secondary education²⁰¹ on an equal basis with others.²⁰² Important efforts have been made in Samoa towards ensuring that policy settings are in place to allow equal access of PWDs to education.²⁰³ The *Education Act 2009* provides that students with disabilities are not only included in compulsory primary education, but also receive appropriate education. In doing so, the Chief Executive Officer (CEO) of MESC must 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.²⁰⁴ MESC’s Strategic Plan includes a guiding principle to include students with disabilities

in mainstream education and it has been working with the Australian Government on the Samoa Inclusive Education Development Programme (SIEDP).²⁰⁵ It should be applauded that there has been a 54% increase in children with disabilities accessing schools since 2009.²⁰⁶ However, it should also be acknowledged that while these laws and policies are in line with relevant international human rights law, Samoa has a long way to go before being able to implement them properly. Recognising and addressing these shortcomings will help to give proper support in the long run.

In focus group discussions of parents of children with intellectual disabilities, several shortcomings were identified. First, they reported that their children get insufficient attention and poor treatment from teachers, and in one extreme experience, abuse at the hands of their teachers.²⁰⁷ They believed that this is due to a lack of specialised trainings for teachers to appropriately teach children with disabilities,²⁰⁸ a problem that is also recognised by MESC.²⁰⁹ Currently, there is limited capacity to provide fully inclusive education for students with specific needs despite the requirement of law to do so. There is a serious gap in capability of teachers to be well-equipped and properly trained to provide appropriate education to students with disabilities. Therefore, simply because the law does not exclude students with disabilities from the general education system, it does not automatically translate to the realisation of access to inclusive, quality and free primary education for PWDs.²¹⁰ In other words, having inclusive education is one thing, but having the capacity and resources to implement it is another.

With regards to employment, the CRPD requires the government to recognise the right of PWDs to gain a living by work freely chosen in a labour market and work environment that is open, inclusive and accessible.²¹¹ Although Samoa has yet to ratify the CRPD, it has taken strides to try and capture this right under domestic law. For example, the *Labour and Employment Relations Act 2013* prohibits discrimination on the basis of

¹⁸⁵ *Samoa Signs CRPD*, SAMOA OBSERVER, available at: <http://www.samoaoobserver.ws/other/community/11721-samoa-signs-convention-for-rights-of-disabilities>, [accessed 29 June 2015].

¹⁸⁶ See note 183 at Art. 1 and Art. 3.

¹⁸⁷ MWCSO, *Mid-Term Review of the National Policy for Persons with Disabilities*, available at: <http://www.mwcsd.gov.ws/index.php/publications> [accessed 26 June 2015] at 13.

¹⁸⁸ Anonymous Survey participant located on file at the Office of the Ombudsman.

¹⁸⁹ *Ibid.*

¹⁹⁰ Quotes from village consultations located on file at the Office of the Ombudsman.

¹⁹¹ See Annex C for full analysis.

¹⁹² *Ibid.*

¹⁹³ Long Survey qualitative data from approximately 500 surveys with answers related to persons with disabilities (PWDs).

¹⁹⁴ Consultations with parents of children with intellectual disabilities located on file at the Office of the Ombudsman.

¹⁹⁵ MWCSO, *Samoa National Policy for Persons with Disabilities 2011-2016*, available at: <http://www.mwcsd.gov.ws/images/stories/PUBLICATIONS%20WEBSITE/New-update%202013/Ministry%20Policies/DISABILITY%20%20Policy%202011%20-%202016.pdf> [accessed 26 June 2015] at 9.

¹⁹⁶ See note 183 at Art. 8, 1(a).

disability.²¹² However, more needs to be done to actively promote an inclusive approach to the employment of PWDs. Currently, Labour and Employment Relations Regulations are in draft form that will provide certain standards to be met by employers when employing PWDs (e.g. the allowance for medical attention, modified facilities, etc.). Once passed, Ministry of Commerce, Industry and Labour (MCIL) with the support of the NHRI plans to launch awareness programmes and consultations to ensure their implementation.²¹³

According to the Adult Disability Identification Census 2002, only 2.4% of PWDs engage in paid work outside the home and 37.8% do not work.²¹⁴ A representative of MCIL indicated that PWDs are equally welcome to access their job and apprenticeship programmes, but there are no efforts made to cater to the specific needs of PWDs when in these programmes or to even allow them access to apply to it.²¹⁵ As a result, these programmes are not accessed by PWDs.²¹⁶ The CRPD calls for government to ensure PWDs have effective access to general technical and vocational programmes, services and training.²¹⁷ MCIL should comprehensively review the accessibility of their vocational training programmes in order to make them more inclusive.²¹⁸ Samoa should also consider ratifying International Labour Organisation (ILO) Convention 159 - Vocational Rehabilitation and Employment (Disabled Persons), 1983 to spur progress in promoting open market employment opportunities for PWDs.²¹⁹

An issue also exists in communities regarding the right of PWDs to personally profit from their income generating activities. According to Adimaimalaga Tafunai, WIBDI Executive Director, some of their best fine mat weavers are PWDs, but their families take their earnings, leaving them with nothing.²²⁰ Effort should be made to educate families and communities to ensure that the specific needs of PWDs are met, allowing them full and equal participation in employment, including being able to profit from it.

Conclusion: Raising awareness around equal participation of PWDs in society, facilitating all forms of access particularly through the inclusion of PWDs in education and employment will help Samoa live up to the exceptional laws and policies already in place.

Recommendations:

- 15. Government to consider fully ratifying CRPD without reservation and ILO Convention 159 - Vocational Rehabilitation and Employment (Disabled Persons), 1983.**
- 16. NHRI to ensure greater inclusion of PWDs in future consultations for the State of Human Rights Report and specifically raise awareness of the term “equal participation” and its implications for PWDs.**
- 17. MESC and MWCSO, in collaboration with NHRI, to develop workshops for teachers on PWDs and human rights, including strengthening inclusive education.**
- 18. As recommended in MWCSO’s Mid Term Review, MCIL to review the accessibility of their vocational training programmes in line with ILO Convention 159 - Vocational Rehabilitation and Employment (Disabled Persons), 1983 and recommend how they can be made more inclusive.**

¹⁹⁷ Quote from village consultations located on file at the Office of the Ombudsman.

¹⁹⁸ Since 2013 to date, the Ministry of Works, Transport and Infrastructure (MWTI) has been undertaking a review of the building code to align with best practices on accessibility. This review should be completed and the new code implemented and enforced.

¹⁹⁹ See note 183 at Art. 9.

²⁰⁰ See e.g. note 187; See also MESC’s Inclusive Education Policy for Students living with Disability (IEPSD, currently in draft form), and interviews with NOLA representatives, both on file at the Office of the Ombudsman.

²⁰¹ While Samoa is not yet party to CRPD it is important to highlight its

requirement for free secondary education, which Samoa has not yet fully realised as fee-free education only extends to year 11.

²⁰² See note 183 at Art.24(2)(b). It is important to note the ‘reasonable accommodation’ standard within the CRPD meaning necessary and appropriate modification and adjustments not imposing a disproportionate or undue burden to ensure PWDs the enjoyment or exercise on an equal basis with others of all human rights and fundamental freedoms.

²⁰³ MESC’s other efforts should also be supported, such as conducting public awareness raising for parents and communities, enhancing classroom support for teaching staff, supporting sign language and Braille in schools and undertaking awareness raising for teachers on disabilities and human rights. See note 187 at 39 - 41.

Case study: Herbert Bell – Radio Presenter and Advocate for Persons with Disabilities

Herbert Bell (age 28) is an advocate for disability rights and the winner Nuanua O Le Alofa's (NOLA)²²¹ Advocacy and Human Rights Award 2014.²²² He is also well known as a radio presenter for Samoa FM, where he has worked full time for the past 5 years. He has been blind since birth, but feels very lucky to have grown up in a supportive environment: *“When I am with my family I don't feel like I have a disability.”*

However, Herbert is quick to point out that this is not the case for many PWDs in Samoa. Indeed, Herbert has witnessed that some children do not receive any access to education; instead they are kept at home or are forced to beg on the streets. In order to address these issues, Herbert believes that further advocacy, media campaigns and education programmes for parents and communities to promote attitudinal change is needed. Herbert understands the need for equal access to education as a beneficiary of assistance from Digicel® and NOLA to attend university. He did not receive any support from the Government—a key area he thinks the Government should address.

Further, Herbert is aware of the need for equal access to employment as he has been on the receiving end of discrimination by employers who were unsure how to accommodate is blindness. Herbert has even spoken to some Assistant CEOs in the Government that expressed concerns that PWDs may not be able to meet the demands of a high pressure work environment, further reflecting the need for education and awareness-raising. He feels there should be more accessibility and increased options for employment of PWDs. Finally, Herbert recognises that the Government should provide a pension for PWDs who are unable to work.

²⁰⁴ See note 97 at s. 61.

²⁰⁵ See note 102 at 29.

²⁰⁶ 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].

²⁰⁷ Consultations with parents of children with intellectual disabilities located on file at the Office of the Ombudsman.

²⁰⁸ *Ibid.*

²⁰⁹ See note 102 at 25.

²¹⁰ See note 183 at Art. 24(2)(a)(b) in comparison to note 97 at s. 61.

²¹¹ See note 183 at Art. 27(1).

²¹² *Labour and Employment Relations Act 2013*, s. 20.

²¹³ Correspondence with MCIL located on file at the Office of the Ombudsman.

²¹⁴ See note 195 at 5.

²¹⁵ For example, no efforts have been made to allow for persons who are deaf or blind be able to access an application.

²¹⁶ MWCSO, PWD Sector Meeting Review, December 2014.

²¹⁷ See note 183 at Art. 27(1)(d).

²¹⁸ See note 187 at 26-27.

²¹⁹ *Ibid.* at 7.

²²⁰ Women in Business Development Inc. (WIBDI) Consultation, 29 April 2015.



NHRI INSPECTION TEAM WITH PRISONS AND CORRECTIONS OFFICERS AT OLOMANU JUVENILE CENTRE, JANUARY 2015



NHRI INSPECTIONS TEAM WITH PRISONS AND CORRECTIONS COMMISSIONER, TAITOSUA F E WINTERSTEIN, JANUARY 2015



*CUSTODY CELLS AT TUASIVI CUSTODY CELLS, SAVAII,
JANUARY 2015*

3.1.4 OUR PRISONERS

In January and February of this year, the NHRI carried out its first inspections of places of detention²²³ in an effort to monitor facility conditions, assess the basic standards and identify any areas for improvement.²²⁴ Following inspections, the Detention Centre Inspections Report 2015 was produced and clearly indicated that prisoners comprise one of the most vulnerable groups in Samoan society. As such, this section will pull directly from the NHRI's inspection work, focusing on four major issues: **(1) decreasing overcrowding in the main prison, (2) improving access to water, sanitation and hygiene (3) addressing the lack of basic health care (4) providing rehabilitation and reintegration activities and (5) upgrading the substandard conditions of Tuasivi Police Custody Cells.**

Prior to delving into the issues, it is important to first highlight what is working well. The Inspection Team found that the matai system within the prisons is effective and provides a uniquely Samoan approach to prisoner management and rehabilitation. There is genuine respect between prisoners and officers, evidenced by the low escape rates seen across facilities despite the low security environment. The clearest example of this is Vaiaata Prison that accommodates inmates in an open, community-like environment. Further, the separation of Prisons from MOP to be a stand-alone Samoa Prisons Corrections Services (SPCS) appears to be an excellent approach that is paving the way for new policies and standards aimed at promoting the humane treatment of prison inmates. Spiritual education is commonly provided across all prisons. While there were a number of positive aspects, there were also other issues in the detention facilities that were less satisfactory and require improvement.

DECREASING OVERCROWDING IN THE MAIN PRISON

Overcrowding at Tafaigata is a major issue. The prison and custody cells remained overloaded due to the lack of construction of new facilities despite an increase in detainees. Sometimes the numbers of detainees per cell exceeded the maximum number by more than double.²²⁵ When prisons are congested and overcrowded, it gives way to further problems affecting the hygiene of prisoners as well as the cleanliness of facilities. Further, the separation of juveniles from adults in all facilities was not necessarily common practice. When cells are overcrowded, keeping prisoner populations properly separated and in line with international law²²⁶ becomes more difficult. The classification and separation of young detainees is a major issue that must be addressed, particularly when serious offenders are housed with minor offenders.²²⁷ In particular, the rape of an 11 year-old boy by a 19 year-old at Olomanu raised serious concerns in this regard.²²⁸

IMPROVING ACCESS TO WATER, SANITATION, AND HYGIENE

There are serious water shortage issues for all detention centres and the quality of drinking water is very poor.²²⁹ Prisoners often went without clean drinking or washing water for extended periods of time.²³⁰ Additionally, many of the water storage tanks were unclean. The poor quality of drinking water is also a concern for food preparation and many inmates reported widespread gastrointestinal issues.²³¹ Naturally, water shortage issues exacerbate the ability for any facility to remain sanitary and hygienic and keep prisoners in good health. For example, during periods without water, detainees at Olomanu were required to go to the toilet in the fields. They also had only coconuts to drink and went without showering for up to two months.

²²¹ The national body that promotes and coordinates the advocacy work for people with disabilities in Samoa.

²²² TALAMUA MEDIA & PUBLICATIONS, *Blind broadcaster wins Advocacy and Human Rights Award 2014*, (21 December 2014) available at: <http://www.talamua.com/blind-broadcaster-wins-advocacy-and-human-rights-award-2014> [accessed 29 April 2015].

²²³ The visits occurred from the 13 to 19 January and 3 February 2015 and included inspection of the following facilities: Tafaigata Prison, Police Custody (Apia), Mental Health Treatment Centre, Moto'otua, Vaiaata Prison and Tuasivi Police Custody (Savaii), Olomanu Juvenile Centre, and Tuasivi Police Station (follow up), Fagamalo, Asau and Palauli Police Outposts (Savaii) as well as Faleo Police Outpost (Upolu).

²²⁴ See NHRI, Detention Centre Inspections Report 2015, on file at the Office of the Ombudsman.

²²⁵ In Tafaigata, the maximum number of detainees per cell is 15, but the Inspections Team counted numbers past thirty per cell.

²²⁶ See note 84 at Art.18 and Art. 34.

²²⁷ Housing detainees with serious criminal histories alongside those with minor offenses is of concern due to possible negative influences and even the potential for rape, particularly amongst young and old offenders.

²²⁸ SAMOA OBSERVER, Report dated 10 Dec 2014 (not published online), on file at the Office of the Ombudsman.

²²⁹ See note 224 at 12, 17 and 21 (water issues at Tafaigata, Vaiaata and Olomanu, respectively).

ADDRESSING THE LACK OF BASIC HEALTH CARE

Policies and practices in relation to health care also need improvement, including better serviced and resourced clinics and better access to hospitals, especially for Tafaigata, Olomanu and Vaiaata prisons. Many of the facilities had no medical clinic and lacked even a first aid kit for minor injuries or illness.²³² Tafaigata was the only facility to have a small medical clinic serviced by a single nurse, who is herself an inmate, which raises serious concerns.²³³ Many detainees indicated that they had to supply their own medication or bandages and even had to ask the guards to provide these personally.²³⁴

PROVIDING REHABILITATION AND REINTEGRATION ACTIVITIES

Rehabilitation and reintegration activities (other than plantation work) are not occurring at any of the prisons. This limits prisoner capacity to effectively reintegrate and become active members of society who do not pose a risk of reoffending. This is of particular concern at Olomanu where increased attention to formal and vocational education for child detainees is seriously needed.²³⁵

UPGRADING THE SUBSTANDARD CONDITIONS OF TUASIVI POLICE CUSTODY CELLS

The sub-standard condition of the Tuasivi Police Custody Cells is a matter that needs urgent attention. The way that suspected offenders are treated at Tuasivi Police Station is inhumane. The Inspection Team found the living conditions appalling: custodies were required to urinate in empty bottles that were kept outside the door, custodies went for days without access to toilets or clean drinking water and weeks without access to showers, food had to be provided by their families,²³⁶

ventilation was extremely poor with almost no natural light, the cells were filthy and littered with food and refuse from previous detainees, and they were extremely malorderous.²³⁷ On the day of the visit, a 16 year-old child had been locked in these conditions for several days.²³⁸ Following the inspection visit, the Office called on the police to immediately institute measures to alleviate the appalling situation at Tuasivi. Some measures have been implemented pending the provision of appropriate facilities to hold arrested people at Tuasivi, but conditions remain unsatisfactory.²³⁹

Conclusion: Securing the rights of persons in detention, a population that is often forgotten, must come into focus. *Feamanaiaa'i* in the *Fa'asamoa* calls for the mutual recognition, acknowledgment and accommodation of one another's humanity, position and responsibilities in society. *Feamanaiaa'i* is reflected in daily interactions, and must be extended in full to detainees in prison despite their convictions. In general, all current and future prisoners should be briefed on all matters relevant to their detention, including their rights and obligations.

Recommendation:

19. Continued partnership between the NHRI, MOP, and SPCS to ensure that the conditions of detention meet minimum human rights standards. See the Detention Centre Inspections Report 2015 for more details and more comprehensive, time-bound recommendations.

3.2. COMMUNITY, FAMILY AND PERSONAL HEALTH

The NHRI, in consultation with health organisations, decided to conceptualise human rights issues related

²³⁰ *Ibid.*

²³¹ See note 224 at 21.

²³² *Ibid.* at 13, 18 and 21 (health care service issues at Tafaigata, Vaiaata and Olomanu, respectively).

²³³ *Ibid.*

²³⁴ *Ibid.*

²³⁵ See note 84 at Art. 28 and Art. 37.

²³⁶ Some custodies had family in Upolu, not Savaii, which mean they did not have daily access to either food or water.

²³⁷ See note 224 at 25-28.

²³⁸ *Ibid.*

²³⁹ Ministry of Police has indicated to the Office that they are in the

process of renovating the cells.

²⁴⁰ Clapham et al., *Realizing the Right to Health*, Swiss Human Rights Book, Vol. 3 (2009).

²⁴¹ *Ibid.*

²⁴² World Health Organisation (WHO) correspondence, 28 April 2015, located on file with the Office of the Ombudsman.

²⁴³ NHS, *About NHS: Our Vision, Mission & Values*, available at: <http://www.nhs.gov/ws/index.php/about-the-dhb#OVMV> [accessed 15 June 2015]; Mission, vision, values and; See also NHS Consultation, 9 June 2015, notes on file with the Office of the Ombudsman.

²⁴⁴ WHO, Media Centre: The right to health, available at: <http://www.who.int/mediacentre/factsheets/fs323/en/> [accessed 5 June 2015].

to health in a manner that reflects the Samoan lifestyle and is culturally appropriate. For instance, sensitive issues like reproductive health are not framed solely as a women's issue; rather it is discussed as a family issue because that is a more culturally appropriate way to open up dialogue around the subject. As such, general issues that survey participants felt needed to be addressed related to the affordability, accessibility and quality of health care are outlined under 'Community Health.' More specific health issues that survey respondents felt needed to be addressed, such as teenage pregnancy, sexually transmitted infections (STIs), and the health consideration of mothers during unwanted pregnancy, are outlined under 'Family and Personal Health.'

3.2.1. COMMUNITY HEALTH

Human rights require that quality health systems are available, accessible and acceptable.²⁴⁰ They also demand that positive action is taken to address the economic, social and political inequalities behind mortality and ill-health.²⁴¹ It is important to acknowledge the work of the Ministry of Health (MOH) and the National Health Service (NHS) in improving the overall health status for Samoa over the past decade.²⁴² The new Tupua Tamasese Meaole Hospital is a world class health facility and NHS's focus on primary health care and prevention in order to improve health outcome in the long term should be applauded.²⁴³ From the Survey, the most commonly agreed-upon issues were: **(1) improving the affordability of health care (2) improving the accessibility of health care, and (3) improving the quality of health care.**

IMPROVING THE AFFORDABILITY OF HEALTH CARE

According to the World Health Organization (WHO), the right to health includes access to affordable health care.²⁴⁴ According to NHS, half of the population that

receives care does not pay consultation fees.²⁴⁵ For example, children 15 years and under, senior citizens on pension, mental health patients, PWDs and maternity patients do not pay these fees.²⁴⁶ This leaves the rest of the population, namely the economically active population, to pay full health care costs.²⁴⁷ Comparative to many other countries in the world, this funding scheme covers a good portion of the population and is considered economical.²⁴⁸

However, only one-quarter (25%) of Survey respondents found health care affordable, and even if they did agree it was affordable, the qualifying answers often indicated that it may not be for rural families.²⁴⁹ Despite the fact that it is relatively cheap to see a doctor (usually only \$10 tala), it is apparent that poor families from rural areas still find this unaffordable.²⁵⁰ The issue here is to unpack exactly what keeps poor, rural families from being unable to afford and access healthcare. Comprehensively addressing this issue is beyond the capability of this Office and exceeds the scope of this section; however, the NHRI believes unpacking this issue means tackling the broader issue of poverty and convincing families to prioritise health. For example, if families can pay \$10 tala for Vailima® or play 'Bingo', they can pay \$10 tala to see a doctor. It is a matter of educating families and communities about the collective responsibility of public health and the benefits of making healthy choices.

IMPROVING ACCESSIBILITY OF HEALTH CARE

According to WHO, health facilities, goods and services must be accessible to everyone.²⁵¹ The Survey defined accessibility in terms of the time it takes for families to reach the nearest health care facility.²⁵² Less than one-third (32%) of respondents could access their nearest medical facility in less than 30 minutes.²⁵³ This compounds the issue of affordability as the cost to get to a clinic can be prohibitive to those who live far from any form of medical care. Further, the focus

²⁴⁵ NHS Consultation, 9 June 2015.

²⁴⁶ Of these populations, pensions, mental health patients, and PWDs receive free medicine. Further, children under the age of 15 receive medicines at reduced cost.

²⁴⁷ The current funding scheme: 96% funded by Government and 4% funded by NHS, which is approximately 4 to 5 million tala per year. It should be emphasised that much of the services that NHS provides depends on its budget and limited funding of plays a large role in its ability to meet population health needs. In other words, if there are budget cuts, there will be cuts to services to some degree.

²⁴⁸ See e.g. WHO, Global Health Observatory Data, available at http://www.who.int/gho/health_financing/en/ [accessed 5 June 2015].

²⁴⁹ See Annex C for a full review of Question 11 of the Survey.

²⁵⁰ Over-representation of rural populations in the Survey demonstrates that affordability of health care is a major issue. Consultations in Manono and Apolima also focused on this issue as one of the most pressing for those communities, especially as regards the compounding issue of accessibility.

²⁵¹ See note 244.

²⁵² The Office recognises the limited scope of physical accessibility in the Survey (e.g. simply in geographical terms, not in terms of accessibility for PWDs or other vulnerable groups).

²⁵³ See Annex C for a full review of Question 13 of the Survey.

groups and village consultations in Savaii, Manono and Apolima indicated clear accessibility challenges for those communities, as many of them must travel for hours to seek medical attention. Finally, the lack of ambulatory care and emergency response, particularly for rural areas, was also flagged for inclusion in this Report as several participants wrote of experiences of family members dying while on the way to emergency care.²⁵⁴

It is important to note here that there is a clear disparity in access to health care for rural and remote communities as compared to urban communities.²⁵⁵ In order to address this, NHS has mobile clinics that travel to district hospitals and health centres in rural areas in Upolu and Savaii once a week (except for Leulumoea District Hospital which is twice a week) with a variety of services that include dental, imaging (portable x-ray), pharmaceutical and antenatal care to name a few.²⁵⁶ Noting NHS's limited resources and capacity, it is still important to ensure that these mobile clinics are available more than once a week in order to reach a wider population in those rural communities.

It is also important to highlight that a gap exists in services to remote areas like Manono-Tai and Apolima-Tai. Samoa Family Health Association (SFHA) has a mobile clinic that target remote areas in Upolu and provides those communities with specific family planning and sexual and reproductive health services every three months.²⁵⁷ While SFHA's mobile clinic attempts to fill this gap in services to remote areas, it is largely restricted by funding and resource constraints. NHS recognises that it needs to strengthen services to rural and remote areas and provide a coordinated and integrated approach to services to those communities.²⁵⁸

IMPROVING THE QUALITY OF HEALTH CARE

🚩 *“Not enough doctors. Local doctors overworked and treatment isn't always accurate. Nurses*

think they own the hospital and have terrible serve skills or appreciation for their line of work which is to HELP and take care of patients. Quality of health care in Samoa confirms that it is STIL a third world country.” [sic]²⁵⁹

According to WHO, the right to health includes access to health care of appropriate quality.²⁶⁰ The majority of Survey participants (60%) found the quality of healthcare unsatisfactory.²⁶¹ The most common complaint related to the quality of health care was the limited number of doctors.²⁶² Further, many of the focus groups in village consultations, especially those in rural Savaii, Apolima-Tai and Manono-Tai, voiced concerns with the availability of physicians. In the most recent survey conducted, there were only 48 doctors and 185 nurses and midwives per 100,000 people.²⁶³ The NHS Corporate Plan 2014-2016 indicates that the continued shortage of health care professionals poses a major challenge.²⁶⁴ Current estimates on this shortage vary, but NHS numbers state that there are 57 doctors and 360 nurses.²⁶⁵

🚩 *“Too many sudden and unexplained deaths.”*²⁶⁶

The limited amount of doctors and other health care personnel has serious implications. Complaints around long waiting times to see a doctor were also fairly common, with participants even indicating family members dying in clinic waiting rooms.²⁶⁷ Long waiting times are a direct result of the lack of doctors. Accordingly, NHS has been working hard to remedy this 'brain drain' issue,²⁶⁸ but it can only do so much. NHS has developed a Responsive Workforce Plan to help fill gaps in health personnel.²⁶⁹ It has also established the Faculty of Medicine with NUS that helps to fast track new doctors in specific specialities as needed.²⁷⁰

Survey participants and villagers also mentioned that the

²⁵⁴ Qualitative answers to specific issues (last question of the Survey) on file at the Office of the Ombudsman.

²⁵⁵ Despite the fact that the Office could not properly disaggregate for urban and rural populations, it was overwhelmingly apparent that the rural communities consulted did not feel they had equal access to health care.

²⁵⁶ Correspondence with NHS on file at the Office of the Ombudsman.

²⁵⁷ SFHA hopes to expand the mobile clinics to Savaii in July 2015.

²⁵⁸ NHS Consultation, 9 June 2015.

²⁵⁹ Quotation from anonymous Survey participant on file with the Office of the Ombudsman.

²⁶⁰ See note 244.

²⁶¹ See Annex C for a full review of Question 12 of the Survey.

²⁶² Qualitative data from Survey participant on file at the Office of the Ombudsman.

²⁶³ Commonwealth Health, Health systems in Samoa (survey conducted between 1997 and 2010), available at: http://www.commonwealth-health.org/pacific/samoa/health_systems_in_samoa/ [accessed 25 June 2015].

²⁶⁴ NHS, *Corporate Plan 2014-2016*, available at: <http://www.nhs.gov/ws/images/NHS/Documents%20for%20Website/NHS%20Corporate%20Plan%202014-2016.pdf> [accessed 5 June 2015] at 9.

²⁶⁵ Estimates on this shortage vary.

²⁶⁶ Quotation from anonymous Survey participant on file at the Office of the Ombudsman.

²⁶⁷ *Ibid.*

lack of training for medical personnel was a concern.²⁷¹ Many rural areas still heavily rely on traditional approaches to medicine and complained of a relative lack of knowledge for basic medical care in some hospitals. From NHS's perspective, in most cases, patients wait too long to seek formal medical care, at which point it is too late to remedy the illness and the family blames the physician.²⁷² Other times, there is a lack of proper equipment to treat and diagnose the issue, which ties back into the need to increase the frequency of mobile clinics and expand the range of communities they reach. Regardless, continued medical education and training for both doctors and nurses should be readily available to them. It may also help to provide health information directly to patients, especially in rural areas, in order to increase health literacy and prevent them from waiting too long to seek essential medical care.

Another common complaint dealt with the bedside manner of health personnel, particularly nurses. Many Survey respondents viewed the way in which nurses treated patients negatively and complained about their poor service skills.²⁷³ NHS also recognised this as an issue and is addressing it through: (1) after hour nurse managers who have been trained to identify problems in previous shifts, (2) a complaint system with requisite disciplinary action if needed and (3) induction courses for all NHS staff that include reviews of the Code of Conduct and attitude guidelines for their work.²⁷⁴ It is worth mentioning that nurses are often overworked, particularly in maternity wards, which again ties back to the health staff shortage issue. NHS notes that nurse intakes in the Faculty of Nursing have increased in recent years.²⁷⁵

Conclusion: Community health outcomes are directly related to the affordability, accessibility, and acceptability of quality health care. It is important to acknowledge the limited capacity of Samoan health care staff in the provision of services (e.g. lack of equipment, workforce

shortage, etc.). Regardless, many communities are disappointed in health care in Samoa on all these fronts, which calls for appropriate responses from service providers and policymakers in collaboration with all implicated sectors.

Recommendations:

20. Government to address the community's perception of affordability of health care through health literacy campaigns:

- a. MOH, NHS, SFHA, in collaboration with WHO, to spur families to prioritise health via health literacy campaigns focused on empowering them to make healthy lifestyle choices

21. Government to address quality issues and gap in accessibility for rural and remote areas through:

- a. NHS provide a coordinated and integrated approach to the mobile clinic scheme in collaboration with SFHA's mobile clinic in order to increase the frequency of services and reach a greater proportion of the rural population
- b. Increase both NHS and SFHA capacity to continue mobile clinic programmes in partnership

3.2.2. FAMILY AND PERSONAL HEALTH

Many women and youth do not have access to the information and support that would enable them to protect their family and personal health, of which sexual and reproductive health is an essential element. Through the Survey and research several issues surfaced that must be both acknowledged and addressed at local and national levels: (1) addressing teenage pregnancy, (2) tackling the high prevalence of STIs, (3) considering

²⁶⁸ Brain Drain refers to the emigration of highly trained or qualified health care workers to more marketable and attractive regions outside of Samoa.

²⁶⁹ NHS, Responsive Workforce Plan, as mentioned in NHS Consultation, 9 June 2015.

²⁷⁰ See NUS, Faculty of Medicine website available at: <http://www.nus.edu.ws/s/index.php/faculty-and-centres/faculty-of-medicine>.

²⁷¹ Qualitative data from Survey participant on file at the Office of the Ombudsman.

²⁷² NHS Consultation, 9 June 2015. For example, diabetic patients often wait too long with foot issues and end up needing amputations that could be all together avoided if those patients saw physicians on a

regular basis.

²⁷³ Qualitative data from Survey participant on file at the Office of the Ombudsman.

²⁷⁴ NHS Consultation, 9 June 2015.

²⁷⁵ *Ibid.*

²⁷⁶ Helena Nygren-Krug, *A Human Rights-Based Approach to Non-Communicable Diseases*, Swiss Human Rights Book, Vol. 3. at 263-276.

²⁷⁷ *Ibid.* at 265.

²⁷⁸ *Ibid.* at 264.

²⁷⁹ Quotation from anonymous Survey participant on file with the Office of the Ombudsman.

²⁸⁰ *Ibid.* 281 See note 32 at para. 32. The Committee indicated that

An Emerging Issue: The human rights-based approach to non-communicable disease

Many participants wanted the Report to address alcohol abuse, exposure to smoking, and a range of non-communicable disease (NCDs) issues, principally diabetes and cancer. These issues, often labelled as ‘life-style epidemics’, are interrelated and have common modifiable risk factors such as tobacco use, unhealthy diet, physical inactivity and the harmful use of alcohol.²⁷⁶ A rights-based approach goes beyond the behavioural risk factors, such as smoking and over-eating, and considers underlying root causes such as access to nutritious foods, healthy lifestyle information and education, and the rights to safe and healthy working conditions.²⁷⁷

As regards government intervention in the context of NCDs, a wide range of social, economic and political determinants for health are implicated. For example, sectors such as agriculture, finance and taxation, education, recreation and sports, media and communication, urban planning, and of course, public health, must all come together to reduce the level of exposure of individuals and populations to the common modifiable risk factors while simultaneously strengthening the capacity of these groups to make healthier lifestyle choices.²⁷⁸ The private sector—including tobacco, food, sugar and alcohol industries—also plays a significant role in this issue and the Government can protect health rights by proper regulation of these areas.

“according to a 2008 survey, 32.8 per cent of the population have at least one sexually transmitted infection.”

²⁸² MWCSd, *Mothers and Daughters Report 2014*, available at: <http://www.mwcsd.gov.ws/index.php/women/mothersdaughtersnew> [accessed 25 June 2015].

²⁸³ *Ibid.*

²⁸⁴ 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.

²⁸⁵ SFHA, Data Request on file at the Office of the Ombudsman.

²⁸⁶ *Ibid.*

²⁸⁷ Consultation notes from SVSG, 1 May 2015, on file at the Office of the Ombudsman.

²⁸⁸ This is also an obvious human rights violation for the child.

²⁸⁹ Insert news articles on this issue. See also Consultation notes from SVSG, 1 May 2015.

²⁹⁰ Quotation from anonymous Survey participant on file at the Office of the Ombudsman.

²⁹¹ 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.

²⁹² MOH and SBS, *DHS Final Report 2009*, available at: <http://dhsprogram.com/publications/publication-fr240-dhs-final-reports.cfm>

the health of mothers during unwanted pregnancy and (4) acknowledging the need for family planning and comprehensive sexuality education.

ADDRESSING TEENAGE PREGNANCY

“It happens society should not down play better access to birth control but allow women/men easy access to practise safe sex, instead of secretly and being unequipped to handle a baby.”²⁷⁹

“Better access to birth control prevents unwanted pregnancy that eventually leads to abuse from family members.”²⁸⁰

The CEDAW Committee voiced serious concerns over the high rate of teenage pregnancies and the fact that existing sex education programmes are insufficient in bringing attention to all aspects of prevention.²⁸¹ To help address this, the Division of Women under MWCSO has conducted a programme with implementation assistance from SFHA that targeted mothers and daughters and focused on fostering effective communication and decision-making skills on sexual and reproductive health. The objective was to allow mothers to share and discuss sexual rights and issues, including protection from HIV/AIDS and STIs, with their daughters in an understanding and non-violent manner while also raising awareness of CEDAW.²⁸² The programme uncovered cases of attempted suicide by young mothers afraid that their own mothers would not accept their pregnancy.²⁸³

According to the MOH, the adolescent birth rate is 39 births per 1000 women aged 15 to 19.²⁸⁴ For 2014, SFHA reported that they served 19 patients under the age of 17 who sought their services during pregnancy, many of whom needed counselling throughout the process.²⁸⁵

Each and every one of those patients sought alternatives to bringing the pregnancy to full term.²⁸⁶ SVSG also voiced concerns around unwanted pregnancy and the risks girls take in hiding the pregnancies from families for fear of being banned or beaten.²⁸⁷ This is a clear human rights issue. These hostile social and cultural attitudes towards pregnant teenagers can also result in the violations of other human rights, such as the rights of the child. In fact, an increase in the number of unwanted babies being left in sewage systems²⁸⁸ indicates a serious need for publically addressing this issue and supporting young mothers instead of shunning them.²⁸⁹

Recommendation:

22. MWCSO to 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.

TACKLING THE HIGH PREVALENCE OF SEXUALLY TRANSMITTED INFECTIONS

“Condoms prevent unwanted pregnancies and can protect men and women from infectious diseases such as AIDS.”²⁹⁰

STIs are infections that are spread primarily through person-to-person sexual contact. According to the SPC, Samoa has the highest prevalence of STIs in the Pacific Region coupled with one of the lowest contraceptive prevalence rates (CPR).²⁹¹ The Second Generation Surveillance Survey (SGSS) 2008—the results of which were corroborated by Samoa’s Demographic Health Survey (DHS) 2009—revealed an extremely high prevalence of Chlamydia, particularly for youth under 25 at 71%.²⁹² Testing for STIs is mandatory for all pregnant women during antenatal care.²⁹³ SFHA

[accessed 5 June 2015].

²⁹³ All maternity patients are tested for Chlamydia, HIV, Hepatitis B, and Syphilis.

²⁹⁴ See note 285.

²⁹⁵ Consultation answer during focus group with church leaders in response to whether or not youth should be allowed access to condoms if they need them.

²⁹⁶ The contraceptive prevalence rate is the proportion of women of reproductive age who are using (or whose partner is using) a contraceptive method at a given point in time. Definition provided by MOH in line with WHO. Calculated by any contraceptive method among currently married women aged 15 to 49. Limits: only married women.

See note 292.

²⁹⁷ Notes from church consultations and results of church Surveys.

²⁹⁸ See Annex C for full analysis.

²⁹⁹ *Ibid.*

³⁰⁰ NCC and church consultation data on file at the Office of the Ombudsman.

³⁰¹ Church consultation answer to question: “Should women have the right to choose how many children they have and when they have them? Why or why not?”

³⁰² *The Crimes Act 2013* does not provide exceptions for abortions in the case of rape and incest.

³⁰³ Provide estimates according to CIU.

reported that the number of women aged 15 to 49 with STIs and receiving treatment for those STIs totals 1038 (424 for 2013 and 614 for 2014).²⁹⁴

✚ *“Youth should not be taught about sex and condoms should not be accessible to them.”²⁹⁵*

Fortunately, 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 is not at ideal levels. According to the MOH, Samoa’s CPR is 17.8% for any contraceptive method among currently married women ages 15 to 49.²⁹⁶ 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 among religious leaders.²⁹⁷ As such, the challenge is to convey the seriousness of this issue despite its taboo nature and create dialogue as well as solutions to this growing problem.

Recommendation:

23. MOH, NHS, SFHA, in consultation with NHRI, UNFPA and UNAIDS to 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.

CONSIDERING THE HEALTH OF MOTHERS WITH UNWANTED PREGNANCY

The most effective way to prevent unwanted pregnancy is through the use of contraceptive methods. The majority of survey participants (60%) agreed that there should be better access to birth control for both men and women.²⁹⁸ In fact, an even higher percentage (73%) of

village leaders agreed with this statement, particularly rural women leaders.²⁹⁹ Even church leaders agreed to better access to birth control, highlighting women’s health as a major contributor to her right to choose how many children she has and when she has them.³⁰⁰ However, consideration of a mother’s health must also expand to not only her right to choose the number of her children and when she has them, but also the circumstances under which she becomes a mother.

✚ *“Women must have the right to choose the number of kids she wants to have based on her health conditions and financial security.”³⁰¹*

According to SFHA, 36 women sought unsafe abortions for unwanted pregnancies in 2014, although these are only the documented cases, and there are likely many others that go unreported. Currently, there is no protection for females who wish to terminate pregnancy when it results from sexual violence or incest.³⁰² This is concerning considering that evidence suggests that pregnancy from these criminal acts is more common than official statistics recognise.³⁰³ Perhaps this is because these topics are off-limits in many social and familial environments. However, not discussing them does not mean they do not exist, and the emotional, physical and mental burden often falls solely on the pregnant mother, who does not have many options outside of SFHA and SVSG in receiving support.³⁰⁴

Under the *Crimes Act 2013*, abortion is still 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 woman or girl.³⁰⁵ Currently, the law does not provide for exceptions in cases of rape or incest. It should be recognised that unwanted pregnancy also occurs outside of cases of rape and incest and that these mothers also seek alternatives. The CEDAW Committee has warned that such prohibitions lead to women seeking unsafe,

³⁰⁴ This cannot be exaggerated enough, SFHA and SVSG are the only options for young mothers who find themselves in a position of unwanted and unplanned pregnancy, particularly due to family violence.

³⁰⁵ *Crimes Act 2013*, s. 116. Allowable up until 20 weeks gestation.

³⁰⁶ *Ibid.*

³⁰⁷ Quotation from anonymous Survey participant on file with the Office of the Ombudsman.

³⁰⁸ See e.g. IPPF, *Sexual and reproductive health and rights: a crucial agenda for the post-2015 framework*, available at: http://www.ippf.org/sites/default/files/report_for_web.pdf.

³⁰⁹ Quotation from anonymous Survey participant on file with the Office of the Ombudsman.

³¹⁰ See note 90 at para. 32 and para. 33. The Committee also noted that many women are unable to gain access to some birth control methods without the consent of a parent or partner. While this issue did not surface in our community consultations, it is something the Office has noted this as a human rights issue.

³¹¹ A total of 5,089 women in 2013 and 4,639 in 2014. See note 285.

³¹² See note 291 and note 308.

³¹³ Quotation from anonymous Survey participant on file with the Office of the Ombudsman.

³¹⁴ UNFPA, *Operational Guidance for Comprehensive Sexuality Education: A Focus on Human Rights and Gender*, available at: <http://www.unfpa.org/sites/default/files/pub-pdf/UNFPA%20Operational%20>

illegal abortions, which is currently the case. The CEDAW Committee is also concerned that a woman is liable to imprisonment of up to 7 years for the unlawful procurement of her own miscarriage.³⁰⁶ It is not fanciful to view suicide as an option that occurs to a pregnant victim of rape or incest in the circumstances they face in Samoa.

Recommendation:

24. Government to consider the serious plight of, and viable medical options for, the victims of rape and incest as well as financially support SFHA and SVSG in the provision of comprehensive family counselling services for these cases.

ACKNOWLEDGING THE NEED FOR FAMILY PLANNING AND COMPREHENSIVE SEXUALITY EDUCATION

“Definitely need better awareness and much better access to birth control. Family health workers should be approachable and trained not to judge (customer service) young women who opt to take any form of contraception.”³⁰⁷

Human sexuality is an essential element of healthy social relationships and the very cornerstone of personal, family and community health.³⁰⁸ However, most sexual and reproductive health programmes ignore the social, cultural and economic factors that prevent women and young people from making healthy decisions and contribute to their vulnerability to poor sexual and reproductive health outcomes, such as exposure to HIV and STIs, sexual violence and undesired or unsafe pregnancy. Therefore, acknowledging the need for family planning and comprehensive sexuality education is one step towards achieving reproductive freedom and promoting healthy social relationships.

Guidance%20for%20CSE%20-Final%20WEB%20Version.pdf [accessed 5 June 2015].

³¹⁵ 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).

³¹⁶ UNESCO, Attitudinal Survey Report on the delivery of HIV and Sexuality Reproductive Health Education, UNESCO Apia Office for Pacific States, at 23.

³¹⁷ Moreover, this framework is also informing a Joint Programme by UNESCO and UNFPA on this issue.

³¹⁸ See email - “Human Rights Council, OP4, Human rights and the environment, adopted by the General Assembly, 15 April 2014 Decision

“Birth control should control especially for families who don’t have enough money to feed their families and take them to school.”³⁰⁹

The CEDAW Committee is concerned that almost half (46%) of women have limited access to high quality reproductive and sexual health services and recommended that Samoa ensures that women do not face barriers in gaining access to family planning information and services, especially in rural areas.³¹⁰ According to SFHA, a total of 9,728 women patients requested access to contraception in 2013 to 2014, all of whom received some form of birth control, 30 of which were intrauterine devices.³¹¹ It is important to remember that when a woman has the right to her own health, the health of families and communities is improved. Thus, improving women’s access to family planning information and services means investing in communities as a whole and is the most cost effective way of improving family health outcomes.³¹²

“It is a pathetic thought. (How can) we teach children about sex? It is not right because they will be a time when each person sill know how to do such act. Condoms should not be used by youth.”³¹³

Comprehensive Sexuality Education (CSE) is a rights-based and gender-focused approach to sex education that equips young people with the knowledge, skills, attitude and values to develop a positive view of their sexuality in the context of their emotional and social development.³¹⁴ A common misconception exists that CSE and access to condoms encourage premarital sex. This was a subject that many church leaders disapproved of as a topic of discussion, particularly for children and youth, but given the current rate of STIs and unwanted teenage pregnancy, it is a topic that must be discussed. Indeed, good sex education like CSE, delivered in the context of religious and social norms, can in fact

A/HRC/RES/25/21, available at: <http://daccess-dds-ny.un.org/doc/UN-DOC/GEN/G14/136/17/PDF/G1413617.pdf?OpenElement> [accessed 28 July 2015]. UN General Assembly, The human right to water and sanitation: resolution / adopted by the General Assembly, 3 August 2010, A/RES/64/292, available at: <http://www.refworld.org/docid/4cc926b02.html> [accessed 23 June 2015]

See e.g. UN General Assembly, United Nations Conference on the Human Environment, 15 December 1972, A/RES/2994, available at: <http://www.refworld.org/docid/3b00f1c840.html> [accessed 25 June 2015] (whose principle 1 states that: “man has the fundamental right to freedom, equality and adequate conditions of life, in an environment of a quality that permits a life of dignity and wellbeing, and he bears

Case Study: Samoa Family Health Association Supporting and Planning Samoan Families

The Samoa Family Health Association (SFHA) is a non-governmental organisation that provides invaluable health services to families in Samoa. SFHA strives for an environment where all women, men and young people have access to the sexual and reproductive health information and services they need; where sexuality is recognised as both a natural and precious aspect of life and a fundamental right; where choices are fully respected; and where stigma and discrimination have no place.

The focus of their work is dedicated to strengthening sexual and reproductive health and rights. Particularly, their efforts are focused on young women from poor and excluded communities because they bear the greatest burden of violence and disease. They support sexual and reproductive health policies, innovative programmes and research that addresses the social, cultural and economic factors that undermine improved health outcomes for women and girls.

SFHA has provided significant support and data to complete this Report. The trouble is that while SFHA provides the bulk of the services around sexual and reproductive health in Samoa, services that are integral to every mother and girl of reproductive age, they receive very little funding or support from the government to do this work—a job that the government is obligated to provide, not only from its international obligations, but also from within its own Constitution. This must change.

a solemn responsibility to protect and improve the environment for present and future generations); See also UN Commission on Human Rights, Human rights and the environment, 24 February 1995, E/CN.4/RES/1995/14, available at: <http://www.refworld.org/docid/3b00f0cc14.html> [accessed 25 June 2015], UN Human Rights Council, Human rights and climate change : resolution adopted by the Human Rights Council, 15 July 2014, A/HRC/RES/26/27, available at: <http://www.refworld.org/docid/5583e16734.html> [accessed 25 June 2015].”

³¹⁹ UN General Assembly, The human right to water and sanitation: resolution / adopted by the General Assembly, 3 August 2010, A/RES/64/292, available at: <http://www.refworld.org/docid/4cc926b02.html> [accessed 23 June 2015].

³²⁰ See note 33 at Art. 14(2)(h); See also note 84 at Art. 24(2).

³²¹ See note 183 at Art. 28.

³²² MNRE, *Water for Life Sector Plan 2012 – 2016*, available at: <http://www.mnre.gov.ws/index.php/water-for-life> [accessed 24 June 2015] at 9.

³²³ Quote from Anonymous Survey participant located on file at the Office of the Ombudsman.

³²⁴ *Ibid.*

³²⁵ See note 177 at 7.

³²⁶ Focus group and consultation notes located on file at the Office of the Ombudsman.

³²⁷ See note 292 at 20; See also note 322 at 9.

prevent premarital sex by providing youth with a full understanding of the consequences of their actions. In the event that youths decide to engage in premarital sex regardless they are equipped with the knowledge and contraception to prevent adverse consequences for their health and future.

CSE, including the right to education and to health, is foundational in tackling the issues brought up in this Report. It is the government's responsibility to provide formal and informal sexual and reproductive health information that promotes the well-being of youth, enhances gender equality, responsible sexual behaviour, and prevents early and unwanted pregnancy, STIs, sexual abuse, incest and violence—all issues discussed within this Report.³¹⁵ 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.³¹⁶ The United Nations Population Fund (UNFPA)'s Operational Guidance for CSE provides an excellent framework for this that the government should consider adopting.³¹⁷

Conclusion: Improving family and personal health is crucial to achieving sexual and reproductive equality. When women have reproductive freedom, when men understand and recognise reproductive equality, and when youths are comprehensively educated about sexual health, families and communities are transformed.

Recommendation:

25. MOH, MESC and NHS 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.

3.3. ENVIRONMENTAL HEALTH

Living in a clean and healthy environment is fundamental to the wellbeing and sustainable livelihoods of Samoans. Human Rights Council Decision 25/21 recognises that States have obligations under human rights law which are relevant to the enjoyment of a safe, clean, healthy and sustainable environment. The UN has also passed a number of resolutions which discuss the right to a safe and healthy environment, the role that environmental health plays in wellbeing and sustainable livelihoods, and the impacts of climate change on a safe and healthy environment.³¹⁸ From a human rights perspective, water and sanitation and climate change are the most pressing issues and will be the focus of this Report.

3.3.1. WATER AND SANITATION

In 2010, the UN General Assembly formally recognised the rights to water and sanitation and acknowledged that they are essential to the realisation of all human rights.³¹⁹ Further, CEDAW and CRC respectively recognise the rights of women and children to clean water and sanitation³²⁰ and CRPD recognises the right of PWDs to clean water.³²¹ Safe drinking water and sanitation improve health and well-being.³²² From the Survey and outreach the major issue for water and sanitation is **ensuring a consistent and clean supply, particularly in rural areas.**

🚰 *"Water is always dirty."*³²³

*"No good water in Maagiagi and supply and water is often dirty."*³²⁴

While the majority (68%) of the Survey respondents reported that they have regular access to clean water, qualitative responses and focus group discussions indicated that hygiene and sanitation remain problems

³²⁸ See Water and Sanitation Sector Policy Support Programme Phase II and MDG Initiative, *Action Fiche for the Independent State of Samoa*, available at: http://ec.europa.eu/europeaid/sites/devco/files/aap-financing-samoa-af-20121219_en.pdf [accessed 5 Jun 2015] at 2; See also Samoa Planning and Urban Management Agency, *National Sanitation Policy 2010*, available at: http://www.mnre.gov.ws/images/Draft_Final_Sanitation_Policy__Draft_1_.pdf [accessed 24 June 2015] at 2.

³²⁹ UNFCC, *National Adaptation Plan of Action (NAPA)*, available at: <http://unfccc.int/resource/docs/napa/sam01.pdf> [accessed 26 June 2015] at 13.

³³⁰ Quote from anonymous Survey participant located on file at the

Office of the Ombudsman.

³³¹ MNRE, *Water for Life Sector Plan 2012 – 2016* note 327; See also note 328 at 2.

³³² See note 206 at 14.

³³³ Quote from qualitative responses to village Survey located on file at the Office of the Ombudsman.

³³⁴ Small island developing states (SIDS) are particularly vulnerable to the impacts of climate change such as increased risk of natural disasters (e.g. cyclones) and through the threats that sea level rise poses to small islands. MNRE, *Samoa Climate Change Policy Review 2015: Assessing Progress and Paving the Way Forward*, at 2. The impacts of increasing soil salinity and temperature rise on agriculture is also an issue related

for many areas.³²⁵ Every one of the village consultations in Savaii, Manono and Apolima complained of water supply issues and even some villages (including urban villages) in Upolu flagged water and sanitation as an issue.³²⁶ While the DHS 2009 reports that 98% of Samoan households have access to an improved water source, 81% having water piped to their dwelling, the issue remains that many piped supplies are intermittent and subject to contamination.³²⁷ Approximately 73% of Samoan wastewater is treated onsite using pit latrines and septic tanks, most of which leak into the surrounding environment, watercourses and aquifers.³²⁸ Further, Samoa is experiencing increased occurrence of natural disasters, including extreme rainfall, drought and flooding, all of which exacerbate unreliable water supply and poor water quality.³²⁹

“*Ia faamama pea le suavai i taimi uma o le olaga o lou manatu e tele suavai ua faaleagaina i tafega i se taimi.*” (“*Flooding is affecting the quality of water in many places.*”)³³⁰

MNRE, SWA and MOH are making consistent efforts to address the issues of inconsistencies and contamination with water supply, in particular through the Water for Life Sector Plan 2012 - 2016 and the National Sanitation Policy 2010.³³¹ Sustainable access to safe drinking water and basic sanitation is also a key outcome of Strategy for the Development of Samoa 2012 – 2016.³³² These efforts should be supported to ensure everyone has the clean water and sanitation they need, particularly through sustainable funding within the national budget.

Recommendation:

26. Government to provide adequate and sustainable funding for the implementation of the Water for Life Sector Plan 2012 - 2016 and the National Sanitation Policy 2010 within the national budget.

3.3.2. CLIMATE CHANGE

“*We have the right to stop climate change from happening.*”³³³

Climate change is a global issue with far-reaching implications, particularly for small island developing states.³³⁴ Comprehensively addressing this issue is beyond the capability of NHRI. Therefore, this section focuses solely on the issue raised directly in the Survey and consultations, which was **providing protection from the impacts of climate change as a human rights issue.**

The majority (76%) of the Survey respondents and the vast majority (93%) of village leaders believe that protection from climate change is a human rights issue. This is not all that surprising considering that the impacts of climate change are disproportionately borne by rural communities who rely upon natural resources for their livelihoods.³³⁵ A total of 70% of Samoa’s population (approx. 135,000 people) as well as infrastructure are on low-lying coastal areas that are at risk to rising sea levels and extreme weather events.³³⁶ This is an issue which will directly, and potentially severely, impact the enjoyment of human rights, in particular the right to an adequate standard of living and security in the event of uncontrollable circumstances negatively impacting livelihoods.³³⁷ As such, climate change will likely exacerbate existing human rights challenges.

“*Everyone has the right to live in a safe, decent living space SAFE from danger and other hazards whether man-made or natural.*”³³⁸

MNRE’s “Samoa Climate Change Policy Review 2015: Assessing Progress and Paving the Way Forward”³³⁹ and National Disaster Management Plan 2011-

to climate change.

³³⁵ See note 328 at 13.

³³⁶ *Ibid.* at 7. 337 UN General Assembly, *Universal Declaration of Human Rights (UDHR)*, 10 December 1948, 217 A (III), available at: <http://www.refworld.org/docid/3ae6b3712c.html> [accessed 26 June 2015], at Art. 25.

³³⁸ Quote from qualitative responses to Survey located on file at the Office of the Ombudsman.

³³⁹ See note 334 at 2.

³⁴⁰ Samoa’s NDMP 2011 – 14, approved by the National Disaster Council under Part III s. 9 of the *Disaster & Emergency Management Act 2007*.

³⁴¹ See note 328 at 14. 342 52nd session of the Commission on the Status of Women (2008) “Gender perspectives on climate change,” Issues paper for interactive expert panel on Emerging issues, trends and new approaches to issues affecting the situation of women or equality between women and men, available at: <http://www.un.org/women-watch/daw/csw/csw52/issuespapers/Gender%20and%20climate%20change%20paper%20final.pdf> [accessed 5 June 2015].

³⁴³ See note 334 at 70. Gender and PWDs are also addressed in the NDMP 2011-14. See note 340.

³⁴⁴ Quote from qualitative responses to village Survey located on file at the Office of the Ombudsman.

³⁴⁵ Disaster Management Office (DMO), *National progress report on*

2014³⁴⁰ serve as a positive platform to address human rights issues associated with climate change. The effects of climate change – natural disasters, erosion of land and destruction of plantations – have already impacted people’s livelihoods.³⁴¹ In particular, it must be recognised that women, PWDs and other vulnerable groups may disproportionately suffer the impacts of climate change, including in times of natural disaster.³⁴² Gender and disability concerns should be mainstreamed into the National Policy of Combating Climate Change (NPCCC) to ensure that the human rights of vulnerable groups are adequately protected.³⁴³

🌿 *“People need to work together to reduce activities that can contribute to climate change.”*³⁴⁴

From a human rights perspective, the likelihood that people will be displaced from their land as a result of natural disasters and rising sea levels is of serious concern. This may lead to problems of internal migration as persons whose homes are in low-lying areas may become displaced by the effects of climate change. Samoa will need to address the social and cultural implications of the possible internal displacement of people from their traditional homes. Following the tsunami of 2009, affected villages were relocated to safe zones further inland³⁴⁵ and support for alternate livelihoods suited to the relocation sites were provided.³⁴⁶ The development of a resettlement guideline, integrated into the community disaster and climate risk management programme is currently being developed.³⁴⁷ As most land in Samoa is owned under customary title, suitable land for new settlements is difficult to find.³⁴⁸ The concept of displacement and resettlement will have to be addressed in a culturally sensitive manner, initially through education and awareness-raising in communities and with the village *fono* and ultimately supported by policy.

The overarching Disaster Risk Management (DRM) National Action Plan and the *Disaster and Emergency Management Act 2007* provide legislative arrangements

for the response to natural disasters and requires that an updated National Disaster Management Plan (NDMP) is kept.³⁴⁹ Samoa has been implementing NDMP 2011-14, the operation of which has been extended and will be reviewed in July 2015. It is commendable that disaster risks are being addressed at the village level. For example, the Disaster Management Office’s village outreach activities, the availability grant schemes for civil society and CBOs like Civil Society Support Programme, and the reporting on village preparedness through MWCS³⁵⁰ all help to ensure that the most vulnerable are protected. As recommended in the Samoa Development Strategy 2012 – 2016, village councils and communities should be appropriately trained in DRM and climate change adaptation.³⁵¹

Conclusion: Samoa has made significant progress in adaptation efforts, particularly considering its limited size and capacity to respond to such a widespread issue.³⁵² Despite this, efforts are still needed to ensure that mitigation activities are adequately funded.³⁵³ The Government will need to put in place institutional and policy measures to ensure appropriate coordination and mainstreaming of climate change programmes and policies at a national level³⁵⁴ so that everyone is appropriately protected from and supported to mitigate and adapt to climate change.

Recommendations:

- 27. MNRE to mainstream gender and disability concerns into the NPCCC to ensure that the human rights of vulnerable groups are adequately protected in the implementation and adaptation of activities.**
- 28. MNRE and DMO, in collaboration with UNDP, to undertake education and awareness-raising in communities and with the village council to prepare for possible climate change induced displacement and resettlement.**

the implementation of the Hyogo Framework for Action (2011-2013) – interim, available at: http://www.preventionweb.net/files/28739_wsm_NationalHFAprogress_2011-13.pdf [accessed 24 June 2015] at 37.

³⁴⁶ The Government of Samoa, *An Account of the tsunami disaster, the response, its aftermath, acknowledgment and the trek to recovery*, located at: http://www.preventionweb.net/files/27077_tsunamipublication2wfbblanks.pdf [accessed 24 June 2015] at 26.

³⁴⁷ DMO and MNRE Consultation, 29 June 2015.

³⁴⁸ See note 345 at 37.

³⁴⁹ *Disaster and Emergency Management Act 2007*, s. 9.

³⁵⁰ DMO and MNRE Consultation, 29 June 2015. For example, DMO’s Community Disaster and Climate Risk Management Project, in original

partnership with the Red Cross, develops community-specific plans and adoption strategies for dealing with disasters and climate change issues. Correspondence with DMO on file with the Office of the Ombudsman.

³⁵¹ See note 206 at 20.

³⁵² See note 328 at 5. For example, the transition to renewable energy will require regional and international support.

³⁵³ *Ibid.* at 6.

³⁵⁴ *Ibid.* at 6-7.

³⁵⁵ See UN General Assembly, International Covenant on Economic, Social and Cultural Rights (ICESCR), 16 December 1966, United Nations, Treaty Series, vol. 993, p. 3, available at: <http://www.refworld.org/>

29. Government to consider revision of the Village Fono Act 1990 to include DRM and climate change adaptation as part of the responsibilities of the village fono and consider providing budget allocations to village councils for DRM and climate change adaption.

3.4. RELIGIOUS AND ECONOMIC FREEDOM

As Party to the ICCPR, Samoa is obligated to uphold certain religious and economic freedoms, many of which are also enshrined in Samoa's Constitution.³⁵⁵ Naturally, religious freedom is of utmost importance to Samoa as 99% of its citizens practise some form of it, and the issue of preventing restrictions on it is discussed under the freedom of religion.³⁵⁶ Economic freedom has been conceptualised as poverty reduction as this has been a reoccurring issue/theme throughout the Report and needs to be addressed as a stand-alone issue.

3.4.1. THE FREEDOM OF RELIGION

Samoa's Constitution provides robust protection on religious freedom, sharing nearly the same language as Article 18 of UDHR as well as Article 18 of the ICCPR.³⁵⁷ It states that every person has the right to freedom of thought, conscience and religion; this right includes freedom to change religion or belief, and freedom, either alone or in a community with others, and, in public or private, to manifest and propagate his religion or belief in worship, teaching, practice and observance.³⁵⁸ In church and village consultations, many of the concerns raised in discussions related to the issue of **preventing restrictions on the freedom of religion**.

🚩 *"I think churches should be advised about Human Right because the Gov't break it and some church Ministers are against promoting it."*³⁵⁹

docid/3ae6b36c0.html [accessed 26 June 2015] ICESCR also provides robust protections on religious and economic freedom, which is why the NHRI recommends that Samoa ratify it.

³⁵⁶ See note 30 (99% of population are members of churches under the Christian denomination).

³⁵⁷ UN General Assembly, *International Covenant on Civil and Political Rights (ICCPR)*, 16 December 1966, United Nations, Treaty Series, vol. 999, p. 171, available at: <http://www.refworld.org/docid/3ae6b3aa0.html> [accessed 26 June 2015] at Art. 18. See also note 336 at Art. 18; See note 20 at Art. 11.

³⁵⁸ See note 20 at Art. 11.

³⁵⁹ Survey respondent on the inclusion of human rights related issues for the Report located on file at the Office of the Ombudsman.

In the consultations with churches, the National Council of Churches (NCC) members indicated that the freedom of religion is falsely defined in Samoa; that Samoans should only have the freedom to choose a Christian religion, not to bring any new religion into the county.³⁶⁰ They further noted that all new religions should be vetted in-depth before being allowed in Samoa to ensure that they worship God.³⁶¹ Further, NCC is apprehensive regarding the diversification of the Christian faith and its members have actively continued to voice concerns that this is not beneficial for the overall Christian community. Finally, minority religions also voiced concerns over the ability of their members to practice the religion of their choosing when married into another family that does not share the same faith.³⁶²

In consultations with villages, issues arose regarding the freedom of choice and freedom from coercion with regards to religion. Some villagers reported having the choice of only a single church within their village, or that the creation of new formal congregations is banned,³⁶³ while some villages allow their people to practice any religion outside of the village.³⁶⁴ The freedom to choose a minority religion is often not available because village leaders only allow one church in the village or they restrict the introduction of new churches into the village.³⁶⁵ For example, the Muslim mosque has freedom to operate because it is on freehold land in a non-traditional village where approval is not controlled by village chiefs.³⁶⁶

In March 2010, the Government established a Commission of Inquiry (COI) to make recommendations on possible amendments to the Constitution in response to concerns from religious leaders regarding the introduction of new religious groups. The COI has made it clear that religious freedom under Article 11 of the Constitution belongs to the individual and not a specific religion and that there should be no restrictions on new religions in Samoa.³⁶⁷ Limiting or restricting religious freedom would be against human rights norms and undemocratic.³⁶⁸ The NHRI refers to the COI Report

³⁶⁰ National Council of Churches (NCC) Consultation, 12 March 2015, notes located on file at the Office of the Ombudsman.

³⁶¹ *Ibid.*

³⁶² Bahai Temple Consultation, 30 April 2014, notes located on file at the Office of the Ombudsman.

³⁶³ Village consultations, notes located on file at the Office of the Ombudsman.

³⁶⁴ See note 27.

³⁶⁵ Bahai Temple Consultation, 30 April 2014. See also Muslim Consultation, 11 March 2015.

³⁶⁶ Muslim Consultation, 11 March 2015.

³⁶⁷ While the Land and Titles Court identifies the authority of Alii and Faipule as matters of Samoan custom, the Supreme Law acts more



METHODIST CHURCH ON MANONO ISLAND



NHRI IN CONSULTATION WITH THE NATIONAL COUNCIL OF CHURCHES 12 MARCH 2015

and its findings³⁶⁹ and strongly believes that it should be upheld and enforced. Religion plays an important and dynamic role within Samoan communities and must be protected. The national motto ‘Samoa is founded on God’ reflects the significance of religion.

Recommendation:

30. Government to uphold the findings of the COI and NHRI to monitor on an annual basis within its State of Human Rights Report any restrictions on religious freedom.

3.4.2. POVERTY REDUCTION

According to the Human Rights Committee under ICESCR, poverty can be defined as a human condition categorised by sustained or chronic deprivation of the resources, capabilities, choices, security and power necessary for the enjoyment of an adequate standard of living and other civil, cultural, economic, political and social rights.³⁷⁰ Economic freedom is especially tied to the reduction of poverty because when people can earn a living, it reduces poverty and improves the quality of life for all.³⁷¹ The issue of poverty reduction is a multi-dimensional problem that cannot be fully dissected within the context of a single report and the NHRI is not capable to address such a complex issue alone. Therefore, this section will focus solely on the main issue identified from the Survey that relates to poverty: **reducing the cost of living.**³⁷² Based on consultations and research, the NHRI believes that in order to reduce the cost of living Samoa must: (1) increase employment opportunities, particularly for the youth, (2) increase community development, and (3) mitigate cultural and religious financial obligations.

🌿 *“Lessen the heavy loads of the people of Samoa.”*³⁷³

strictly and is less compromising as it emphasises more on the protection of constitutional fundamental rights of individuals.

³⁶⁸ See note 27.

³⁶⁹ *Ibid.*

³⁷⁰ UN Committee on Economic, Social and Cultural Rights (CESCR), *UN Committee on Economic, Social and Cultural Rights: Report on the Twenty-fifth, Twenty-sixth and Twenty-seventh Sessions (23 April-11 May 2001, 13-31 August 2001, 12-30 November 2001)*, 6 June 2002, E/2002/22; E/C.12/2001/17, available at: <http://www.refworld.org/docid/45c30b330.html> [accessed 23 June 2015].

³⁷¹ See generally, United Nations System Task Team, *Post-2015 Development Agenda Realising the Future We Want for All: Report to the*

It is worth noting that Samoa graduated from a ‘least developed country’ (LDC) status to developing country status,³⁷⁴ which shows positive progress towards the eradication of poverty. Further, UNDP has Samoa on track to meet MDG 1 of eradicating extreme hunger and poverty.³⁷⁵ Despite progress in big picture economic growth and within high level development framework, there is disparity in development outcomes particularly in rural and remote areas.³⁷⁶ Approximately 20% of Samoa’s population lives below the basic needs poverty line (BNPL),³⁷⁷ with the higher proportion of rural populations falling below the BNPL.³⁷⁸ Basically, this means that about 1 in every 5 Samoans lives in poverty.

Increasing Employment Opportunities

The right to an adequate standard of living is enshrined in Article 25 of UDHR as well as Article 11 of ICESCR. Fulfilment of this right depends on a number of other economic, social and cultural rights, most importantly for the purposes of this section—the right to work.³⁷⁹ According to SPC, 41.3% of Samoans are in the workforce, yet the unemployment rate is only 5.1%.³⁸⁰ This likely reflects the high level of informal employment that exists in Samoa as approximately two-thirds of the population is dependent on agriculture for food and livelihood.³⁸¹ It is positive that a large majority of people are actively engaged in livelihood activities; however it ties poverty strongly to agricultural performance. This can deprive many families of sustainable, stable livelihoods and prevent them from meeting their basic needs in an increasingly monetised society.³⁸² Further, there is a particular lack of formal employment and other opportunities for school leavers and youth, with 16% youth unemployment in 2011, an issue which will persist, noting the proportion of Samoa’s population under 19.³⁸³

Secretary General, New York: 2012.

³⁷² Quote from qualitative responses to school children Survey located on file at the Office of the Ombudsman. One of the most common responses from the children surveyed on the three things they would like see changed in Samoa was the reduction in the cost of living.

³⁷³ Quote from qualitative responses to school children Survey located on file at the Office of the Ombudsman.

³⁷⁴ MFAT, *Market Access General Information on Trading Arrangements*, available at: http://www.mfat.gov.ws/Trade%20Webpages/Market%20Access/MFAT%20Market%20Access%20Brochure_Feb%202015.pdf [accessed 23 June 2015].

³⁷⁵ UNDP, *MDG Overview Cook Islands, Niue, Samoa, Tokelau*, available at: <http://www.ws.undp.org/content/samoa/en/home/mdgoverview/>

Increasing Community Development

The vision of the 2012 - 2016 Strategy for the Development of Samoa is “Improved Quality of Life for All” and the sub-outcome of “Community Development” seeks to empower communities and support the more vulnerable through social safety nets.³⁸⁴ Further, the Community Sector Plan 2010 – 2015 specifically empowers communities to lead their own sustainable development and seeks to ensure that vulnerable members of society be fully included in development activities.³⁸⁵

The implementation of these and further pro-poor strategies and plans should be fully supported; MWCSO affirms that to ensure sustainable poverty reduction for the most vulnerable, education, skills development, improved health and increased employment and business opportunities must be established.³⁸⁶ To further protect the rights of all Samoans to an equitable and sustainable livelihood Samoa should ratify the ICESCR; noting that Samoa has the right policy and legislative settings, including the *Labour and Employment Relations Act 2013*, in place to meet its requirements.

Mitigating Cultural and Religious Financial Obligations

From a cultural perspective, Samoa must be commended for its strong sense of community, which often acts as a safety net for the vulnerable members of society. However, Survey participants noted the cost and burden *fa'alavelave* (traditional obligations) and church contributions can place on families. This is an issue that also relates to students withdrawing from tertiary studies due to inability to meet costs:

🌿 *“But my advice to parents is prioritise your children and put aside money for school fees. We know fa'alavelave is part of our lives but no*

one dies if they don't go to fa'alavelave. Put money aside for children and money will be there for fa'alavelave when they (children) have good jobs and get paid.”³⁸⁷

When misunderstood or misused these important cultural norms can unfortunately inhibit the ability of Samoan families to escape poverty. It is important that these cultural obligations are respected and valued; while at the same time should take into consideration the needs of vulnerable families who simply cannot afford to uphold these obligations.

Recommendations:

- 31. Create exposure to the labour market for youth and introduce entry-level jobs by:**
 - a. Government to consider the feasibility of an annual cadetship programme for every Ministry, in collaboration with PSC
 - b. Enhance apprenticeship opportunities, in particular through incentivising businesses with tax breaks and funding
 - c. Offer structured volunteer opportunities in collaboration with NYC so that youth be mobilised as needed when work opportunities arise (temporary or not).
- 32. Government to consider fully ratifying ICESCR without reservation in order to realise community development in full, particularly for the most vulnerable groups.**
- 33. Village councils and churches to consider alternative ways to minimise cultural and religious financial obligations, particularly for financially vulnerable community members.**

overview/mdg1/# [accessed 6 May 2015]. Additionally, Adequate food means that there is enough food both in quality and quantity to meet nutritional needs and that the food supply is environmentally sustainable, affordable and accessible. UN Committee on Economic, Social and Cultural Rights (CESCR), *General Comment No. 12: The Right to Adequate Food (Art. 11 of the Covenant)*, 12 May 1999, available at: <http://www.refworld.org/docid/4538838c11.html> [accessed 23 June 2015].

³⁷⁶ UNDP, Samoa MDG's Acceleration Initiative, available at: http://www.ws.undp.org/content/dam/samoa/docs/prodocs/UNDP_WS_MDGsAccelerationSignedProdocPage1.pdf [accessed 6 May 2015] at 5.

³⁷⁷ See note 375.

³⁷⁸ See note 111 at 51.

³⁷⁹ See note 354 at Art. 6.

³⁸⁰ SPC, National Minimum Development Indicators, available at: http://www.spc.int/nmdi/labour_force [accessed 6 June 2015].

³⁸¹ See note 111 at 51.

³⁸² *Ibid.*

³⁸³ See “Our Children” section for further discussion.

³⁸⁴ See note 206 at 14.

³⁸⁵ MWCSO, Community Sector Plan 2010 – 2015, at 7-8 (on file at the Office of the Ombudsman).

³⁸⁶ See note 111 at 53.

³⁸⁷ Minister of Education, Sports and Culture, Magele Mauiliu Magele quoted in *Put children first, fa'alavelave second*, SAMOA OBSERVER, available at: <http://www.samoaoobserver.ws/education/4207-put-children-first-faalavelave-second> [accessed 6 May 2015].



**MEN FOCUS GROUP
DISCUSSIONS AT THE
VILLAGE OF FALEALUPO,
SAVAIL, 13 MARCH 2015**

04

EMERGING ISSUES



Several issues emerged from the Survey and outreach that are highlighted in this section. These issues are trends that should be followed up with in subsequent reports as more data and public dialogue happens around them. Since these issues are merely emerging, no recommendations are given in this section; they are merely presented for informational consideration for their inclusion in future reports.

4.1 MENTAL HEALTH

Mental health is not widely discussed in Samoa, but trends discovered in the Survey suggest that it should be. There are three emerging mental health issues to consider: (1) **providing a basic understanding of what mental health is and the services available**, (2) **addressing the link between mental health and abuse** and (3) **expanding suicide prevention strategies**.

“There’s a need for a mental hospital for Samoans cos many people that are mental are sitting in front of store needing money and food.”³⁸⁸

“Samoa does noting to adress mental health issues. We don’t even have a mental health facility with qualified mental health practitioners.”
[sic]³⁸⁹

Aside from basic misunderstandings of what mental health is³⁹⁰ Survey evidence suggests that more can be done to ensure people know that mental health facilities exist in Samoa and are accessible to people who need them. It should also be noted that the reason there are mentally ill persons begging in the streets is due to the fact that they are stigmatised by their families, and by extension, their communities. Stigmatisation is a major factor that leads to their social exclusion and

one that must be addressed.³⁹¹ There is currently one mental health treatment centre in Samoa that has been in operation for quite some time.³⁹² The Mental Health Treatment Centre gives preference to the provision of care, support, treatment or protection on a voluntary basis and within the family and community in which the person lives.³⁹³

“I feel like you need to know the level of mental health, state of a person is in in case of incidence of violence.” [sic]³⁹⁴

“Enforcement of children’s rights can result in less depression and trauma for children as abuse can affect ones mental state.”³⁹⁵

Many participants discussed abuse and depression as issues that they wish to see changed.³⁹⁶ While not always using the term ‘mental health’, there was a general recognition of wanting help in this regard. It is important to flag this issue and address the link between mental health and abuse at a higher level, particularly considering how prevalent abuse – whether physical, emotional and/or sexual – was raised as an issue.

“Mother physically abused her daughter and she tried to commit suicide.”³⁹⁷

“Pregnancy is the cause of some suicide.”³⁹⁸

“Suicide, abuse of children, run away (Pule i le ola, Fasi tamaiti, sola).”³⁹⁹

Finally, many participants also mentioned suicide as an issue for this Report to address, especially in relation to teenage pregnancy. Last year marked the highest number of suicide attempts in Samoa’s history as well

³⁸⁸ Quote from Survey participant located on file at the Office of the Ombudsman.

³⁸⁹ *Ibid.*

³⁹⁰ Due to resource and time constraints, the Survey question on mental health was taken out mainly because participants lacked the basic understanding of the term; rather they attributed it to intellectual disability.

³⁹¹ Mental health education and awareness campaigns could help end stigmatisation issues.

³⁹² Mental Health Treatment Centre was established pursuant to the Mental Health Act 2007 (MHA) and is now the main mental health treatment centre in Samoa.

³⁹³ *Mental Health Act 2007*, s. 5.

³⁹⁴ Quote from Survey participant located on file at the Office of the Ombudsman.

³⁹⁵ *Ibid.*

³⁹⁶ This was particularly true among youth. See Annex C for full analysis. Counselling services and support for free access to telephone support lines would be helpful according to the Mental Health Unit.

³⁹⁷ Quote from Survey participant located on file at the Office of the Ombudsman.

³⁹⁸ *Ibid.*

³⁹⁹ *Ibid.*

⁴⁰⁰ SVSG stated that 25 suicide attempts had been halted in 2014 and according to National Health Services (NHS), a total number of 26 people committed suicide in 2014. Further, the majority of suicides are

Case Study: Suicide Fieldwork

First hand research at the National Hospital with survivors of suicide sheds further light on this issue. Almost every case of attempted suicide investigated was related to a conflict with a family member or intimate partner. Furthermore, attempts seemed to be spontaneous in nature and shortly felt. In one such case, a 23 year-old male recounted his attempted suicide after confronting his step-mother for criticising his effort in the family plantation. He felt unfairly treated and wanted to teach her a lesson, but when he woke up in the hospital, his stepmother had visited him and issues between them ceased. In another case, a 15 year-old female attempted suicide via an overdose of pills while fighting with her younger cousin who was being disobedient; but after the fact realised that she was being 'stupid' and no longer wanted to die.

In the Samoan context it seems that suicide attempts are a means of communication—of expressing unhappiness at being unfairly treated or disrespected, of protesting against familial conflict, and of emotions not being acknowledged—as well as an extreme version of conflict 'resolution.' While it is easy to simplify this as a means of seeking attention this should be avoided, rather it is a way of youth trying to communicate to adults who often fail to acknowledge them due to Samoan power hierarchies. To fully comprehend why individuals go to such extremes, particularly the youth, it is necessary to consider the social role of young Samoans and how to get them to discuss their feelings constructively.

Input from Katja A. S. Frederiksen, Copenhagen University 2015

drug addiction and alcohol related.

⁴⁰¹ OHCHR, *Human Rights Indicators: A Guide to Measurement and Implementation (2012)*, available at: http://www.ohchr.org/Documents/Publications/Human_rights_indicators_en.pdf.

⁴⁰² UN Human Rights Committee (HRC), *General comment no. 34, Article 19, Freedoms of opinion and expression*, 12 September 2011, CCPR/C/GC/34, available at: <http://www.refworld.org/docid/4ed34b562.html> [accessed 24 June 2015].

⁴⁰³ See note 20 at Art. 3.

⁴⁰⁴ See note 356 at Art. 19(2): Everyone shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other

media of his choice.

⁴⁰⁵ SLRC, *Report on Media Regulation*, available at: <http://www.samoalawreform.gov.ws/wp-content/uploads/2014/08/Media-Regulation-Final-Report-Final.pdf> [accessed 24 June 2015]. See also, Leilani Katherine, SAMOA OBSERVER, *The Media Council Prohibitive or Protective?* 9 November 2014, available at: <http://www.samoaoobserver.ws/opinions/12129-the-media-council--prohibitive-or-protective#comments> [accessed 16 June 2015].

⁴⁰⁶ Lagipoiva Cherelle Jackson, International Federation of Journalists, Pacific Media Rights Monitor, 2010.

⁴⁰⁷ The Survey asked: Do you believe that the Media (e.g. newspapers, television, radio, etc.) should be strongly regulated by the Government?

as the highest number of deaths from suicide.⁴⁰⁰ The continuing occurrence of suicide in Samoa is of concern, especially considering its small population that places high emphasis on communal living, cultural principles and Christian values. It is important to raise awareness of suicide as an issue and further consider ways to prevent it.

4.2 THE FREEDOM OF SPEECH AND EXPRESSION

The freedom of speech is commonly used to measure how authoritarian governments are and how free citizens are to express their opinions.⁴⁰¹ The freedom of expression is indispensable for the full development of a person and essential for any society.⁴⁰² Article 13 of the Constitution outlines the freedom of speech and expression⁴⁰³ and Article 19 of the ICCPR specifically outlines the freedom of the media in imparting information and ideas.⁴⁰⁴ Concerns have been raised regarding the *Media Council Bill* (MCB) and its possible restrictions on the freedom of speech and expression, particularly for the media.⁴⁰⁵

Pending the passage of MCB, the issue here appears to be **a gap in the public's understanding of the direct relationship between freedom of speech and media freedom.** When discussing media freedom, the public tends to see it as a privilege of the industry as opposed to an avenue to express their views and opinions,⁴⁰⁶ which is a misunderstanding that the Survey responses corroborated.⁴⁰⁷ First, people want the media – defined within the Survey as the mediums of newspaper, television and radio – to keep them informed of government practices.⁴⁰⁸ On the other hand, people were wary of the media being completely unrestrained.⁴⁰⁹ For those who did not want the media to be strongly regulated by the Government, it was mostly for the purposes of accountability and transparency.⁴¹⁰ For those who did want the media to be strongly regulated, it was also

mostly for the purposes of the media's responsibility to correctly report on issues and Government practices.⁴¹¹ Results on this issue were mixed and suggest that follow up on the issue of freedom of speech and expression is needed, particularly as MCB awaits passage.⁴¹²

The NHRI will be monitoring the outcomes of MCB to ensure that media freedom is not threatened in Samoa. According to SLRC, in the event that a statutory body is established in the legislation, it is important that it is done so properly and that the Government respects the importance of an independent media.⁴¹³ The NHRI intends to report fully on this issue next year, in order to ensure the freedom of speech and expression are properly protected, keeping in mind the gap in the public's understanding of these freedoms.

4.3 REPORT CONCLUSION

The human rights issues identified in the Report present challenges to overcome. The Government has taken a number of progressive legal and policy initiatives to address these issues. However, inadequate implementation of these measures due to insufficient resources, the need to dispel misconceptions around human rights, and the lack of concerted efforts to collect meaningfully disaggregated data continue to act as an obstacle to the progressive realisation of human rights, especially for Samoa's most vulnerable.

This Report has attempted to highlight existing gaps between the recognition of human rights in the country and their implementation. The Report has also attempted to illustrate human rights issues within the Samoa context in order to educate and encourage acceptance of human rights with Samoans. The NHRI hopes that the recommendations provided will serve as a catalyst for change and that the second cycle of the UPR will highlight the need for more actions on the part of Samoa to meet its human rights obligations.

Overwhelmingly, 80% of participants agreed that the Media should be strongly regulated, but when analysed qualitatively, a different picture emerged. See Annex C for a full analysis.

⁴⁰⁸ For example, in agreeing that the Media be strongly regulated, many respondents stated things like: "It can reveal everything that happen to the government each day" [sic]; "They are the one that can link the information to the members of the country."; "They refer to what happen each day in our government so that they answer our problems."

⁴⁰⁹ For example, in agreeing that the Media be strongly regulated: "Because sometimes media take wrong stories but its a must for them to take right and truer stories." [sic].

⁴¹⁰ Qualitative responses to the question suggested a split and incongruence to strong government regulation of the Media. However, for

those that disagreed with strong regulation, it was quite clear why: "For the purposes of accountability and transparency."; "Let them (media) make their own regulations."

⁴¹¹ For example, "everyone had and must speak out for better of our government. The news must spread and everyone had a right to speak and stand up for what is right."

⁴¹² Dependant on the version of the Bill that is passed, SLRC has concluded that a combination of regulatory techniques be used to improve journalistic standards and increase public accountability of the media. It has also stated that news media operators should establish mechanisms within their organisations to enhance dialogue with the public. See note 404 at 50.

⁴¹³ See note 404 at 74.

05

RECOMMENDATIONS TABLE

Keeping in mind the audience and their power to create social change, all of the recommendations made relate to four categories:

- Outreach & Education
- Policy
- Funding
- Data Collection

Recommendations	Section of the report & issue raised	Action outcome(s)	Responsible parties	Timeframe
<p>1. NHRI to launch Women’s Rights Campaign in collaboration with MWCSO, MESC, Sui Tamatai o Nu’u (STN), and relevant NGOs to provide education about and raise awareness of gender role stereotyping and its effects on women, targeting both men and women at all levels of society, particularly in rural areas.</p>	<p>Our Women — tackling gender-role stereotyping</p>	<ul style="list-style-type: none"> • Identify active and supportive STNs to lead village-based women’s rights campaign, particularly women’s rights education • Implementation of innovative human rights curriculum that targets youth (both boys and girls) in primary and secondary schools on breaking stereotypes 	<p>NHRI, MWCSO, MESC, STN, relevant NGOs via consultation with Samoa Umbrella NGO Organisation (SUNGO)</p>	<p>Initiated by the next reporting period (within one year)</p>
<p>2. MWCSO, the Office of the Attorney General (AGO) and the Samoa Law Reform Commission (SLRC), in consultation with NHRI, to consider the drafting of Guidelines for the <i>Village Fono Act</i> requiring <i>Alii</i> and <i>Faipule</i> to take into account women’s participation in decision making within the village.</p>	<p>Our Women—recognising the unequal participation in political and economic life</p>	<ul style="list-style-type: none"> • Consultation with AGO, SLRC, and NHRI on the issue and ways to address it scheduled by the end of 2015 • Coordination with MWCSO and village fono leaders from the villages consulted in this Report to present this issue and create dialogue on solutions by mid 2016 	<p>AGO, SLRC, NHRI, and village councils</p>	<p>Initial consultation completed by end of the year (2015); Village outreach completed by mid 2016.</p>
<p>3. Government to create genuine and durable partnership with WIBDI to promote broader uptake of its economic empowerment programmes, including its development model that focuses on families, particularly in rural areas.</p>	<p>Our Women—recognising the unequal participation in political and economic life</p>	<ul style="list-style-type: none"> • WIBDI economic empowerment programme (for example its fine mat programme) • Strive to provide at least 15% of WIBDI’s budget gap⁴¹⁴ 	<p>WIBDI, Government (MWCSO, MCIL, Development Bank of Samoa, among others)</p>	<p>Adoption of programme initiated by the next reporting period (within one year)</p>
<p>4. Government to provide dedicated funds and adequate assistance to all NGOs working on the protection of families, especially in rural areas, in cooperation with DVU. In particular, priority must be given to building a Family Violence Shelter in collaboration with SVSG to meet the needs of victims of violence.</p>	<p>Our Women—preventing high rates of violence against women; see also Our Children—preventing abuse, including sexual abuse and incest</p>	<ul style="list-style-type: none"> • Engage in consultations with government entities, NGOs and communities on how best to provide adequate assistance to victims of violence, particularly in rural areas • Build a Family Violence Shelter • Enhance SVSG’s rehabilitation programmes for both victims and perpetrators (e.g. anger management programme) • Directed education campaign to vulnerable groups like nofotane to inform them of their rights (regardless of status) 	<p>DVU, SVSG, relevant NGOs via consultation with Samoa Umbrella NGO Organisation (SUNGO)</p>	<p>Build a Family Violence Shelter within 3 years (by the end of 2018); Consultations to be initiated by March 2016; Education campaign initiated by the next reporting period (within one year)</p>

⁴¹⁴ WIBDI receives the majority of its budget from Oxfam in the form of a yearly scheme. The First Year they receive 100% funding, the Second Year is 70% funding and the Third Year (WIBDI’s current position) is 40%, although they have received no funds for July. The Government should provide for at least 15% of the 30% gap in the reduction of funds from the Second Year to the Third Year in order to help keep the NGO’s work sustainable, particularly considering the work it is doing on the Government’s behalf.

Recommendations	Section of the report & issue raised	Action outcome(s)	Responsible parties	Timeframe
5. AGO and SLRC to consider reviewing the <i>Family Safety Act 2013</i> for the inclusion of protections for persons who report incidence of violence, including sexual violence.	Our Women— preventing high rates of violence against women; <i>see also</i> Our Children— preventing abuse, including sexual abuse and incest	<ul style="list-style-type: none"> • Consultation with AGO, SLRC, and NHRI on the issue and ways to address it scheduled by September 2015 	AGO, SLRC	Initial consultation completed by December 2015 ; Review commenced by December 2016
6. NHRI and DVU to enter into a Memorandum of Understanding (MOU) to regularly collect statistical data on domestic and sexual violence disaggregated by sex, age, region (urban/rural), and relationship between victim and perpetrator, to be reported on a quarterly basis directly to NHRI.	Our Women— preventing high rates of violence against women; <i>see also</i> Our Children— preventing abuse, including sexual abuse and incest	<ul style="list-style-type: none"> • Consultation between NHRI and DVU • MOU agreement created • Quarterly reporting mechanism outlined within MOU • Reporting takes place on a quarterly basis 	NHRI, DVU	Initial consultation completed by December 2015 ; Quarterly reporting (every three months) mechanism developed by March 2016 ; reporting commenced by June 2016
7. Dispel the misconception about the rights of the child for both parents and children through community education campaigns and programmes led by the NHRI in collaboration with MWCSO, MESC, and relevant NGOs.	Our Children— correcting the misunderstanding about the rights of the child	<ul style="list-style-type: none"> • Consultations with all relevant stakeholders to ensure a coordinated approach to children's rights • Develop community education campaign which builds upon (and does not duplicate) existing programmes • Implementation of community education campaign 	NHRI, MWCSO, MESC, relevant NGOs via consultation with Samoa Umbrella NGO Organisation (SUNGO)	Consultations initiated by October 2015 ; Education campaign developed by March 2016 ; Implementation commenced by June 2016
8. To use education as a means to combat poverty, the Government, communities, and families must address barriers to education (e.g. hidden costs, child labour) through the recognition of a collective responsibility for the welfare of children.	Our Children— addressing child labour	<ul style="list-style-type: none"> • Government to ensure SSFGS is continued and sustainable, extended through Year 13, and to consider increasing public expenditure on education in general • Communities, particularly 'attendance officers', need to take a more active role in preventing child street vending • Families to prioritise the education of their children through educational media campaign 	NHRI, MESC, Sui o Nuu, school committees, and MOP	Initiated by the next reporting period (within one year)
9. MESC to take steps to reduce dropout rates in secondary schools.	Our Children— providing access to adequate education	<ul style="list-style-type: none"> • Prevent initial dropouts of pregnant girls by implementing programmes and policies to eliminate all negative social and cultural attitudes towards teenage pregnancy within schools. • Provide counselling to pregnant students and young mothers to enable them to continue or re-enter school and finish their education • Reduce the dropout rates, particularly for boys, by expanding vocational programmes like TVET in secondary schools, ensuring their availability in both urban and rural areas 	MESC	Initiated by the next reporting period (within one year)

Recommendations	Section of the report & issue raised	Action outcome(s)	Responsible parties	Timeframe
10. Government to consider the definition of 'unreasonable punishment' within the <i>Child Care Protection Bill</i> to align with CRC principles that any form of discipline involving violence is considered excessive and abusive.	Our Children— preventing abuse, including sexual abuse and incest	<ul style="list-style-type: none"> To be undertaken within the current consideration and development of the <i>Child Care Protection Bill</i> 	MWCSD, MCIL and SLRC	Initiated by the next reporting period (within one year)
11. MESC to step up efforts to enforce the ban on corporal punishment in schools.	Our Children— preventing abuse, including sexual abuse and incest	<ul style="list-style-type: none"> Implement monitoring and reporting system of corporal punishment Complete and implement the National Schools Violence-Free Policy 	MESC	Initiated by the next reporting period (within one year)
12. MWCSD and MJCA, in consultation with NHRI, to work with the village <i>fono</i> , relevant authorities and engaged NGOs to increase public awareness of the Family Safety Act and how to engage in its legal proceedings.	Our Children— preventing abuse, including sexual abuse and incest	<ul style="list-style-type: none"> Consultation with MWCSD, MJCA and NHRI on issue Produce and publish FSA fact sheet and step-by-step guide to relevant legal proceedings Distribute to village councils 		Initial Consultations by December 2015 ; Production of education materials by March 2016 ; Distribution before next reporting period (within one year)
13. NHRI, in collaboration with MWCSD's Child Protection Unit and CID, to investigate and develop child-friendly reporting avenues for child abuse, sexual assault and incest.	Our Children— preventing abuse, including sexual abuse and incest	<ul style="list-style-type: none"> Consultation with NHRI, MWCSD, and CID on the issue Child-friendly reporting system developed and implemented 	MWCSD (Child Protection Unit), NHRI, CID (MOP)	Initial consultations commenced by December 2015 , Reporting system initiated and implemented by December 2016
14. A Memorandum of Understanding (MOU) is agreed between NHRI and CID to establish a system for the regular collection of statistical data on 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.	Our Children— preventing abuse, including sexual abuse and incest	<ul style="list-style-type: none"> Consultation between NHRI and CID MOU agreement created Quarterly reporting mechanism outlined within MOU Reporting takes place on a quarterly basis 	NHRI, CID (MOP)	Initial consultation completed by December 2015 ; Quarterly reporting (every three months) mechanism developed by March 2016 ; reporting commenced by June 2016
15. Government to consider fully ratifying CRPD without reservation and ILO Convention 159 - Vocational Rehabilitation and Employment (Disabled Persons), 1983.	Our People with Disabilities— addressing equal participation of persons with disability	<ul style="list-style-type: none"> Ratify CRPD without reservation Ratify ILO Convention 159 - Vocational Rehabilitation and Employment (Disabled Persons), 1983 	Members of Parliament	Initiated by the next reporting period (within one year)
16. NHRI to ensure greater inclusion of PWDs in future consultations for the State of Human Rights Report and specifically raise awareness of the term "equal participation" and its implications for PWDs.	Our People with Disabilities— addressing the fundamental lack of awareness around equal participation of persons with disability	<ul style="list-style-type: none"> Include within Survey specific question on public understanding of 'equal participation' with regards to PWDs Identify and include broader range of focus groups to gather further data on current understanding of rights of PWDs 	NHRI, SBS	Complete Survey for next Report by end of July 2015 (as scheduled with SBS); Focus Groups identified by September 2015

Recommendations	Section of the report & issue raised	Action outcome(s)	Responsible parties	Timeframe
17. MESC and MWCSD, in collaboration with NHRI, to develop workshops for teachers on PWDs and human rights, including strengthening inclusive education.	Our People with Disabilities— facilitating all forms of access for persons with disability	<ul style="list-style-type: none"> • Consultation with MESC, MWCSD, and NHRI on current education materials on the issue • Include rights of persons with disabilities within human rights curriculum • Develop a teacher’s manual on rights-based inclusive education 	MESC, MWCSD, NHRI	Initial consultation commenced by March 2016 ; Human rights curriculum amended and teacher’s manual developed by December 2016 ; Full implementation by June 2017 ; Full implementation within 3 years
18. As recommended in MWCSD’s Mid Term Review, MCIL to review the accessibility of their vocational training programmes in line with ILO Convention 159 - Vocational Rehabilitation and Employment (Disabled Persons), 1983 and recommend how they can be made more inclusive.	Our People with Disabilities— facilitating all forms of access for persons with disability	<ul style="list-style-type: none"> • Complete review on accessibility • Make recommendations 	MCIL	Review commenced by December 2016 ; Recommendations made by June 2016
19. Continued partnership between the NHRI, MOP, and SPSC to ensure that the conditions of detention meet minimum human rights standards.	Our Prisoners— (1) decreasing overcrowding in the main prison, (2) improving access to water, sanitation and hygiene (3) addressing the lack of basic health care (4) providing rehabilitation and reintegration activities and (5) upgrading the substandard conditions of Tuasivi Police Custody Cells.	<ul style="list-style-type: none"> • See the <i>Detention Centre Inspections Report 2015</i> for more details and more comprehensive, time-bound recommendations. 	NHRI, MOP, and SPSC	Ongoing
20. Government to address the community’s perception of affordability of health care through health literacy campaigns.	Community Health— improving the affordability of health care	<ul style="list-style-type: none"> • MOH, NHS, SFHA, in collaboration with WHO, to spur families to prioritise health via health literacy campaigns focused on empowering them to make healthy lifestyle choices 	MOH, NHS, SFHA, WHO	Initial consultations completed by the next reporting period (within one year); Design of health literacy campaigns within 2 years ; Campaign launched within 3 years
21. Government to address quality issues and gap in accessibility for rural and remote areas.	Community Health— improving the accessibility of health care and improving the quality of health care.	<ul style="list-style-type: none"> • NHS to provide a coordinated and integrated approach to the mobile clinic scheme in collaboration with SFHA’s mobile clinic in order to increase the frequency of services and reach a greater proportion of the rural population • Increase both NHS and SFHA capacity to continue mobile clinic programmes in partnership 	NHS, SFHA	Initial consultations completed by the next reporting period (within one year); Initiation of mobile clinic partnership within 2 years ; Increased capacity within 3 years

Recommendations	Section of the report & issue raised	Action outcome(s)	Responsible parties	Timeframe
22. MWCSO to 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	Family and Personal Health— addressing teenage pregnancy	<ul style="list-style-type: none"> • Regularly scheduled Mothers and Daughter programme reaching all islands • Pilot Fathers and Sons programme 	MWCSO	Initiated by the next reporting period (within one year)
23. MOH, NHS, SFHA, in consultation with NHRI, UNFPA and UNAIDS to launch comprehensive public health campaigns, in particular addressing increased understanding and acceptance of condom and contraceptive use at political, religious and traditional leadership levels.	Family and Personal Health— tackling the high prevalence of STIs	<ul style="list-style-type: none"> • Consult all interested parties on the issue in culturally appropriate format • Target community and church leaders to champion the campaign • Pool funding and launch public health campaign 	MOH, NHS, SFHA, NHRI, UNAIDS, UNFPA	Consultation initiated by February 2016 ; Community and church leader champions identified by June 2016 ; Design of campaign within 3 years ; Campaign launched within 5 years
24. Government to consider the serious plight of, and viable medical options for, the victims of rape and incest as well as financially support SFHA and SVSG in the provision of comprehensive family counselling services for these cases.	Family and Personal Health— considering the health of mothers during unwanted pregnancy	<ul style="list-style-type: none"> • Ongoing Government funding is provided to SFHA and SVSG for medical and counselling services. 	Members of Parliament, SLRC, SFHA, SVSG	By the next reporting period (within one year)
25. MOH, MESC and NHS 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.	Family and Personal Health— acknowledging the need for family planning and comprehensive sexuality education	<ul style="list-style-type: none"> • See UNFPA's Operational Guidelines for implementation of CSE 	MOH, NHS, MESC, UNFPA, UNAIDS	Initiated by the next reporting period (within one year); Implementation of CSE within 3 years
26. Government to provide adequate and sustainable funding for the implementation of the Water for Life Sector Plan 2012 - 2016 and the National Sanitation Policy 2010 within the national budget.	Environmental Health— ensuring a consistent and clean supply is consistent, particularly in rural areas	<ul style="list-style-type: none"> • Fully fund Water for Life Sector Plan 2012 - 2016 and the National Sanitation Policy 2010 	Members of Parliament	Initiated by the next reporting period (within one year)
27. MNRE to mainstream gender and disability concerns into the NPCCC to ensure that the human rights of vulnerable groups are adequately protected in the implementation of activities.	Environmental Health— providing protection from the impacts of climate change as a human rights issue	<ul style="list-style-type: none"> • Conduct consultations with vulnerable communities • Update NPCCC to adequately include gender and disability concerns 	MNRE	Initiated by the next reporting period (within one year)
28. MNRE and DMO, in collaboration with UNDP, to undertake education and awareness-raising in communities and with the village council to prepare for possible climate change induced displacement and resettlement.	Environmental Health— providing protection from the impacts of climate change as a human rights issue	<ul style="list-style-type: none"> • Produce and distribute Resettlement Guide (must be translated into Samoan) • Engage with village councils on preparations 	MNRE, DMO, UNDP	Resettlement Guide produced by January 2016 ; Engagement with village councils initiated by the next reporting period (within one year)

Recommendations	Section of the report & issue raised	Action outcome(s)	Responsible parties	Timeframe
29. Government to consider revision of the <i>Village Fono Act 1990</i> to include DRM and climate change adaptation as part of the responsibilities of the village fono and ensure that village councils and communities are appropriately trained in DRM and climate change adaptation.	Environmental Health— providing protection from the impacts of climate change as a human rights issue	<ul style="list-style-type: none"> • Involve village councils in DRM • MNRE to conduct training in DRM and climate change adaptation for village councils and communities 	MNRE, <i>Sui o Tamaitai</i> and <i>Sui o Nuu</i> .	Engagement with village councils initiated by the next reporting period (within one year)
30. Government to uphold the findings of the COI and NHRI to monitor on an annual basis within its State of Human Rights Report any restrictions on religious freedom.	Religious Freedom— preventing restriction on the freedom of religion	<ul style="list-style-type: none"> • Dedicated section on preventing restrictions on religious freedom in next Report 	NHRI	On an annual basis (yearly)
31. Create exposure to the labour market for youth and introduce entry-level jobs.	Economic Freedom (Poverty Reduction)— reducing the cost of living	<ul style="list-style-type: none"> • Government to consider the feasibility of annual cadetship programme for every Ministry, in collaboration with PSC • Enhance apprenticeship opportunities, in particular through incentivising businesses with tax breaks and funding • Offer structured volunteer opportunities in collaboration with NYC so that youth can be mobilised when work opportunities arise 	MCIL, ILO, National Youth Council (NYC), MWCSD (Youth Division)	By Initial consultations with all relevant parties initiated by the next reporting period (within one year); Consideration and design of programmes within 3 years
32. Government to consider fully ratifying ICESCR without reservation in order to realise community development in full, particularly for the most vulnerable groups.	Economic Freedom (Poverty Reduction)— reducing the cost of living	<ul style="list-style-type: none"> • NHRI and SLRC to do a review on the ratification of ICESCR • Ratify ICESCR without reservation 	Members of Parliament	Initiated by the next reporting period (within one year)
33. Village councils and churches to consider alternative ways to minimise cultural and religious financial obligations, particularly for financially vulnerable community members.	Economic Freedom (Poverty Reduction)— reducing the cost of living	<ul style="list-style-type: none"> • Include issue in village consultations for next Report • Educate village and church leaders on identifying vulnerable community members 	NHRI, village councils, church leaders	By Consultations with village and church leaders initiated by the next reporting period (within one year)



*STAFF OF THE OFFICE OF THE
OMBUDSMAN AND NHRI 2015*

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The Office would like to express a special thank you to the Ministry of Women, Community and Social Development for making arrangements with the 11 villages for consultations, inviting the Office to participate and share the Human Rights Survey with relevant committees and always making time out of their very busy schedule to assist the Office whenever assistance was requested.

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07

ANNEX





KOMESINA O SULUFAIGA

Office of the Ombudsman/National Human Rights Institution

Human Rights Survey 2014-2015

Age:	
Gender:	
Village:	
Disability:	

Human Rights Survey

Through the *Ombudsman (Komesina o Sulufaiga) Act of 2013*, the Ombudsman's Office has been tasked with preparing and submitting an annual State of Human Rights Report. The first Report is due to Parliament in June of 2015. In an effort to make the process as participatory as possible, the Office aims to survey the general population on perceptions of human rights issues in the country.

Please provide honest and complete answers as it will assist the Office in presenting the views of Samoan citizens for this Report. Participation in this survey is **voluntary**, personal details remain **anonymous**, and all information will be used solely for the Report.

Your participation is very much appreciated. Faafetai Lava.

A. Human Rights and Fa'a Samoa

- | | | |
|--|---|---|
| 1. Do you know what human rights are? | Y | N |
| 2. Do you think that human rights and Fa'a Samoa conflict? | Y | N |

Would you like to explain your answers?

B. Equality before the law and non-discrimination

Women's Rights

Abuse is to treat a person with physical or emotional cruelty or violence, especially regularly or repeatedly. *Domestic violence/abuse* is a pattern of behaviour which involves violence or other abuse by one person against another in a marriage, cohabitation or other domestic context.

- | | | |
|---|---|---|
| 3. Have you seen abuse against women and/or girls in your village in the past year? | Y | N |
| 4. If yes, did you report the abuse? | Y | N |

Would you like to explain your answers?

- | | | |
|---|---|---|
| 5. Should there be better access to birth control for both men and women (e.g. contraceptive pill, condoms, etc.) in Samoa? | Y | N |
|---|---|---|

Would you like to explain your answer, including comments on availability, affordability and whether or not you have ever been refused access to birth control of any kind?

Children's Rights

6. Have you or a child in your home reported an instance of corporal punishment (physical punishment, such as caning or flogging) at your/his/her school in the past year? **Y** **N**
7. Should every child aged 5 to 18 have the right to free education in Samoa? **Y** **N**
8. Have you seen domestic abuse against a child in your village in the past year? **Y** **N**

Would you like to explain your answers?

Rights of Persons with Disabilities

Disability is a physical or mental condition that limits a person's movements, senses, or activities. It is important to note that disability is an evolving concept which results from attitudinal and environmental barriers preventing persons with impairments (physical and mental) from full and effective participation in society.

9. Do you believe persons with disabilities have a right to participation in society on an equal basis with others? **Y** **N**
10. In your everyday life, do persons with disabilities have equal access to:
- a. Public transportation system (e.g. bus, taxi, bus terminal, airport facilities, traffic lights, public roads, pedestrian crossings, etc.) **Y** **N**
 - b. National voting system and public office **Y** **N**
 - c. Education, information and communication (e.g. brail, sign language, etc.) **Y** **N**
 - d. Buildings (churches, government centres, markets, etc.) **Y** **N**

Would you like to explain your answers including whether you or a relative have had any difficulty obtaining disability assistance or support?

11. Is there a member of your family with a disability of any kind? **Y** **N**

If yes, please identify the disability: _____

C. Right to life, liberty and the security of person

Arbitrary Arrest and Detention

12. Is the Samoan Ministry of Police and Prisons your first point of contact when a crime has been committed? Y N

If no, why not? If yes, did they respond to your satisfaction?

Inhuman Treatment

13. Do you believe prison inmates should be treated humanely (e.g. good food, clean water, basic sanitation and freedom from abuse)? Y N

Would you like to explain your answer?

D. Right to freedom of speech

14. Do you believe that the Media (e.g. newspapers, television, radio, etc.) should be strongly regulated by the Government? Y N

Would you like to explain your answer?

E. Health

Universal Access

15. Do you think health care in Samoa is affordable? Y N

Would you like to explain your answer?

16. Do you think the quality (e.g. number of doctors, effective treatment, conditions of clinics, etc.) of health care in Samoa is satisfactory? Y N

Would you like to explain your answer?

17. Does it take you less than 30 minutes to get to the nearest health care facility? Y N

Would you like to explain your answer?

Mental Health

18. Do you know what mental health is? Y N

19. Is mental health important to you? Y N

Would you like to explain your answer?

F. Poverty Reduction

Economic Rights

20. Are you regularly employed? Y N

If no, can you please explain? If yes, could you please explain whether you consider your wage to be fair/unfair and provide an estimate of your weekly earnings?

Water and Sanitation Rights

21. Do you have regular access to clean water? Y N

Would you like to explain your answer including whether you also have access to sewage facilities (e.g. toilet, septic tanks, etc.)?

G. Climate Change

22. Do you think protection from the impacts of climate change is human rights issue? Y N

Would you like to explain your answer?

H. Other

23. Do you have any other human rights related issues you wish to raise for the Ombudsman's State of Human Rights Report?

Should you require further clarification on this survey please contact Johanna at Gusman@ombudsman.gov.ws or Kini at loukinikini.vili@ombudsman.gov.ws or telephone 25394 at the Ombudsman Office, Level 5 Central Bank of Samoa Building.

ANNEX B: Short Survey



Office of the Ombudsman/National Human Rights Institute
Human Rights Survey 2014-2015

Age:		Gender:	
Village:		Disability?	

Instructions: Please circle the appropriate answer

- | | | |
|---|---|---|
| 1. Do you know what human rights are? | Y | N |
| 2. Do you think that human rights and Fa'a Samoa conflict? | Y | N |
| 3. Have you seen abuse against women and/or girls in your village in the past year? | Y | N |
| 4. If yes, did you report the abuse? | Y | N |
| 5. Should there be better access to birth control for both men and women (e.g. contraceptive pill, condoms, etc.) in Samoa? | Y | N |
| 6. Have you or a child in your home reported an instance of corporal punishment (physical punishment, such as caning or flogging) at his/her school in the past year? | Y | N |
| 7. Have you seen domestic abuse against a child in your village in the past year? | Y | N |
| 8. Is there a member of your family with a disability of any kind? | Y | N |
| 9. Do you believe persons with disabilities have a right to participation in society on an equal basis with others? | Y | N |
| 10. Do you believe that the Media (e.g. newspapers, television, radio, etc.) should be strongly regulated by the Government? | Y | N |
| 11. Do you think health care in Samoa is affordable? | Y | N |
| 12. Do you think the quality (e.g. number of doctors, effective treatment, conditions of clinics, etc.) of health care in Samoa is satisfactory? | Y | N |
| 13. Does it take you less than 30 minutes to get to the nearest health care facility? | Y | N |
| 14. Do you have regular access to clean water? | Y | N |
| 15. Do you think protection from the impacts of climate change is human rights issue? | Y | N |

Would you like to explain your answers or raise any issues with the Ombudsman?

~ Thank you ~

ANNEX C: Survey Analysis

1. For the **Total Sample**, disaggregate all data by age, gender, urban/rural (U/R) and numbers of participants that identified as disabled:
 - Total number sampled: **2515**
 - Age Range: **10-88 (55 unanswered)**
 - Age Groups: **58% of participants were youth ages 10 to 35 and 42% of participants were adults ages 36 to 88**
 - Gender: **47% M (1154 total), 53% F (1300 total); (69 unanswered)**
 - U/R percentage: **12% of participants came from Urban villages (290 total) and 85% of participants came from Rural villages (2148 total); (77 unanswered) [See Annex for list of villages and designations]**
 - Proportion of participants that identified as disabled: **60 total participants identified as disabled**

2. Identify response rate for each question (1= Yes; 2= No; 0= Unanswered)
 - Q1: **(39 unanswered)**
 - Q2: **Of ‘Yes’ (67 unanswered) or 4% of total ‘Yes’**
 - Q3: **(30 unanswered)**
 - Q4: **Of ‘Yes’ (25 unanswered) or 3% of total ‘Yes’**
 - Q5: **(92 unanswered); 4% of participants**
 - Q6: **(170 unanswered); Of U/R disagg, (28 unanswered)**
 - Q7: **(55 unanswered); 2% of participants**
 - Q8: **(51 unanswered); 2% of participants**
 - Q9: **(79 unanswered); 3% of participants**
 - Q10: **(86 unanswered); 3% of participants**
 - Q11: **(82 unanswered); 3% of participants**
 - Q12: **(98 unanswered); 4% of participants**
 - Q13: **(131 unanswered); 5% of participants**
 - Q14: **(134 unanswered); 5% of participants—Of disagg (64 R/49 U)**
 - Q15: **(130 unanswered); 5% of participants—Of disagg (100 Y/19 A)**

3. For **Questions 1 and 2**:
 - Percentage of participants that claimed to know what human rights are: **76% of participants claimed to know what human rights are (1902 total)**
 - Of those who answered ‘Yes,’ how many thought that human rights and Fa’a Samoa conflict?: **69% of which thought that human rights and FaaSamoa conflict (1321 total)**
 - i. Disaggregate by Age Group: **Of Youth, 62% (647 total) thought it conflicted whereas 80% of adults (650 total) thought it conflicted**
 - ii. Disaggregate by U/R: **N/A**

Question 2: Age Disaggregation

	Youth		Adult	
Yes	647	62%	650	80%
No	343	33%	155	19%
No Response	56	5%	7	1%
Total	1046		812	

4. For **Questions 3 and 4**:

- Rate of abuse witnessed by participants: **39% reported seeing abuse against women and/or girls in their village in the past year**
- Rate of reporting of such abuse among participants: **Of those who reported seeing abuse, only 25% of them reported that abuse**
 - i. Disaggregate by age: **See Table (not statistically significant)**
 - ii. Disaggregate by gender: **See Table (not statistically significant)**

Question 3 & 4: Age & Gender Disaggregation

Response	Youth		Adult	
	Male	Female	Male	Female
Yes	62	76	53	39
No	212	259	122	85
No Response	4	7	4	6
Total	278	342	179	130

	Male Youth %	Female Youth %	Male Adult %	Female Adult %
Yes	22%	22%	30%	30%
No	76%	76%	68%	65%
No Response	1%	2%	2%	5%

5. Full disaggregation of **Question 5**:

- Percentage of participants that agreed that there should be better access to birth control for both men and women, but total question disaggregated by: **60% of participants (1515 total) agreed that there should be better access to birth control**
 - i. Age (do younger participants agree more than older?) **44% of young males did not agree that there should be better access—the highest of any group**
 - ii. Gender (do more women agree than men?) **71% of adult females wanted better access to birth control—the highest of any group**

Question 5: Age & Gender Disaggregation

Response	Youth		Adult	
	Male	Female	Male	Female
Yes	330	447	344	352
No	277	297	176	136
No Response	17	55	4	5
Total	624	799	524	493

	Male Youth %	Female Youth %	Male Adult %	Female Adult %
Yes	53%	56%	66%	71%
No	44%	37%	34%	28%
No Response	3%	7%	1%	1%

6. For **Question 6**:

- Rate of instance of corporal punishment among participants: **18% of participants (465 total) reported an instance of corporal punishment (physical punishment such as caning or flogging) at school in the past year**

- i. Disaggregated by U/R: **Of the participants that reported an instance of corporal punishment, the majority were from rural areas--12% were from urban villages (57 total) and 82% from rural villages (380 total)**
7. For **Question 7**:
- Rate of instance of domestic abuse against children among participants: **34% of participants (858 total) reported domestic abuse against a child**
 - i. Disaggregate by U/R: **Of those participants that reported abuse, 86% where from rural areas (735 total) and 11% from urban (93 total)**
8. For **Question 8**:
- Number of participants that reported disability within their family: **744 participants (30%) reported a disability within their family**
9. For **Question 9**:
- Percentage of participants that agreed that persons with disabilities have a right to participation in society on an equal basis with others: **Only 60% of participants (1514 total) believed that persons with disabilities have a right to participate in society on an equal basis with others**
 - i. Disaggregate by age: **See Table (Adults more readily agree)**
 - ii. Disaggregate by gender: **See Table (not statistically significant)**

Question 9: Age & Gender Disaggregation

Response	Youth		Adult	
	M	F	M	F
Yes	338	443	386	296
No	268	327	127	176
No Response	17	23	11	14
Total	623	793	524	486

	Male Youth %	Female Youth %	Male Adult %	Female Adult %
Yes	54%	56%	74%	61%
No	43%	41%	24%	36%
No Response	3%	3%	2%	3%

10. For **Question 10**:
- Percentage of participants that believe the Media should be strongly regulated: **80% of participants (2002 total) believed that the Media should be strongly regulated by the Government**
 - i. Disaggregate by age: **75% of youth aged 10-35 believed in strong governmental regulation of the Media as opposed to 87% of adults**
11. For **Questions 11-13**:
- Percentage of participants that do not think health care is affordable: **Only 25% of participants agreed that health care is affordable**
 - Percentage of participants that do not think the quality of health care is satisfactory: **60% of participants (1510) find the quality of health care unsatisfactory**
 - Percentage of participants that do not find health care accessible: **Only 32% of participants can access their nearest health care facility in less than 30 minutes**
 - i. Disaggregate by age: **See Table per question**
 - ii. Disaggregate by gender: **See Table per question**

Question 11: Age & Gender Disaggregation

Response	Youth		Adult	
	Male	Female	Male	Female
Yes	174	198	132	108
No	425	564	389	380
No Response	25	33	3	5
Total	624	795	524	493

	Male Youth %	Female Youth %	Male Adult %	Female Adult %
Yes	28%	25%	25%	22%
No	68%	71%	74%	77%
No Response	4%	4%	1%	1%

Question 12: Age & Gender Disaggregation

Response	Youth		Adult	
	Male	Female	Male	Female
Yes	245	305	160	173
No	345	454	355	317
No Response	34	40	9	3
Total	624	799	524	493

	Male Youth %	Female Youth %	Male Adult %	Female Adult %
Yes	39%	38%	31%	35%
No	55%	57%	68%	64%
No Response	5%	5%	2%	1%

Question 13: Age & Gender Disaggregation

Response	Youth		Adult	
	Male	Female	Male	Female
Yes	185	204	211	170
No	401	543	299	307
No Response	38	52	14	16
Total	624	799	524	493

	Male Youth %	Female Youth %	Male Adult %	Female Adult %
Yes	30%	26%	40%	34%
No	64%	68%	57%	62%
No Response	6%	7%	3%	3%

12. For Question 14:

- Proportion of participants with regular access to clean water: **68% of participants report regular access to clean water (26% reported 'No' to this question)**
 - i. Disaggregate by U/R: Only **60% of the Urban population reported regular access/23% reported 'No'** compared to **70% of the Rural population reporting regular access and 27% reporting 'No'**

Question 14: Urban & Rural Disaggregation

Response	Rural	Urban	Rural	Urban
	Frequency	Frequency	Percentage	Percentage
Yes	1509	173	70%	60%
No	574	68	27%	23%
No Response	65	49	3%	17%
Total	2148	290		

13. For **Question 15**:

- Percentage of participants that believe climate change is a human rights issue: **76% of participants (1906 total) agreed that the impacts of climate change are a human rights issue**
 - Disaggregate by age: **See Table (not statistically significant)**

Question 15: Age Disaggregation

Response	Youth		Adult	
	Frequency	Percentage	Frequency	Percentage
Yes	966	67%	903	88%
No	370	26%	102	10%
No Response	100	7%	19	2%
Total	1436		1024	

ANNEX D: State of Human Rights Report Consultations

The following communities, groups, Ministries and NGOs were consulted in preparation of the SHRR:

Sector of Community	Groups/Individuals Consulted
Church Leaders	<ul style="list-style-type: none"> • National Council of Churches (NCC) • Non-NCC Churches: <ul style="list-style-type: none"> ○ Baha'i House of Worship Samoa ○ Islamic Centre of Samoa ○ Assembly of God
Children/ Youth	<ul style="list-style-type: none"> • <i>Sui Tupulaga Talavou o Nu'u</i> via National Youth Council • National University of Samoa • Schools: <ul style="list-style-type: none"> ○ Leififi College ○ Apia Primary ○ Anoamaa College ○ Aana No. 2 College ○ Mata'aevave College ○ Itu o Asau College ○ Palauli College
Village Councils	<ul style="list-style-type: none"> • <i>Sui Tamaitai o Nu'u</i> (STN) Upolu • STN Savaii • <i>Sui o Nu'u</i> Upolu • <i>Sui o Nu'u</i> Savaii • <i>Sui o Malo</i>
Villages	<ul style="list-style-type: none"> • Upolu: <ul style="list-style-type: none"> ○ Motaa'a ○ Lalomauga ○ Vavau ○ Matautu Lefaga ○ Falelatai • Savaii: <ul style="list-style-type: none"> ○ Taga ○ Iva ○ Falealupo ○ Sasina • Manono-tai • Apolima-tai
Government Ministries	<ul style="list-style-type: none"> • Ministry of Women, Community and Social Development (MWCSD) • Ministry of Education, Sports and Culture (MESC) • Ministry of Commerce, Industry and Labour (MCIL) • Ministry of Natural Resources and Environment (MNRE) • Ministry of Health (MOH) • National Health Service (NHS) • Ministry of Foreign Affairs and Trade (MFAT) • Samoa Prisons and Corrections Services (SPCS) • Ministry of Police (MOP) • Office of the Attorney-General (AGO) • Samoa Law Reform Commission (SLRC) • Prime Minister and Cabinet (PMC)

	<ul style="list-style-type: none"> • Ministry of Justice and Courts Administration (MJCA) • Samoan Bureau of Statistics (SBS)
Civil Society	<ul style="list-style-type: none"> • Samoa Umbrella for Non-Governmental Organisations (SUNGO) • Women in Business Development Inc. (WIBDI) • Samoa Victims Support Group (SVSG) • Samoa Family Health Association (SFHA) • <i>Nuanua O Le Alofa</i> (NOLA) • Special Olympics Samoa
International and Regional Organisations	<ul style="list-style-type: none"> • United Nations Development Programme (UNDP) • UN Entity for Gender Equality and the Empowerment of Women (UNWomen) • Joint United Nations Programme on HIV/AIDS (UNAIDS) • World Health Organisation (WHO) • UN Educational, Scientific and Cultural Organization (UNESCO) • UN Children's Fund (UNICEF) • International Labour Organisation (ILO) • Office of the High Commissioner for Human Rights (OHCHR) • Asia Pacific Forum of National Human Rights Institutions (APF) • Secretariat of the Pacific Community (SPC) • Pacific Ombudsman Alliance (POA) • Secretariat of the Pacific Regional Environment Programme (SPREP)

