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Report of the Working Group on the Universal Periodic Review*

Samoa

Addendum

Views on conclusions and/or recommendations, voluntary commitments and replies presented by the State under review

* The present document was not edited before being sent to the United Nations translation services.

1. The UPR Working Group adopted Samoa's national report A/HRC/WG.6/11 on 9th May 2011 during its 12th session. From that meeting a number of recommendations required further consideration. This addendum provides Samoa's responses to those recommendations, which for clarity, are clustered below in thematic issues:

I. International Instruments

Recommendations 75.1, 75.2, 75.3, 75.4, 75.5, 75.6, 75.20

2. Samoa concurs with the importance of having an effective, legally binding international framework for the maintenance and promotion of fundamental human rights of every human being. The remaining conventions identified by the Working Group members are important in this regard. The Government of Samoa, as it does with all other conventions it is a Party to, undertakes to continue the careful and active assessment of Samoa's accession to these remaining conventions that includes its and ability to fulfil all obligations required by each convention such as reporting, legislative, financial and institutional requirements to ensure Samoa is able to deliver, upon becoming a State Party to these conventions.

3. Notwithstanding the fact that Samoa is not yet a member of these treaties, many rights promulgated in these treaties are advanced and streamlined into Government policies and plans. Samoa has also abolished the death penalty and will ratify the second optional protocol of ICCPR in due course. As such, Samoa accepts these recommendations.

Recommendation 75.7

4. Initial discussions on the impact and implication of the CEDAW Optional Protocol on Samoa were conducted in 2005. The experience at the time recognized the need for authorities and stakeholders to have proper understanding of the Protocol first, including the ability to fulfil institutional requirements of the Protocol particularly in light of challenges already faced in implementing CEDAW itself. Samoa recognizes the importance of the Optional Protocol however we believe that more consultations between and among authorities and stakeholders are needed in order to fully understand and have the capacity to implement the Protocol before a commitment is made to accede to it. At the same time, Samoa's court system and reforms being implemented continue to uphold the protection of the rights of women and young girls in Samoa when such cases are brought to the legal system.

Recommendations 75.8, 75.9, 75.10, 75.11 and 75.12

5. Samoa thanks the Working Group members for this recommendation and undertakes to accede to the two Optional Protocols of the Convention on Rights of the Child in due course. While the CRC OP on the involvement of children in armed conflict (2000) may not be of relevance to Samoa because we do not have an armed force, we however believe that the ratification of both these protocols will further strengthen current policies and practice against child pornography and prostitution and such sexual crimes/activities and contribute to global efforts to stop the exploitation of children in armed conflicts.

6. With respect to the initial part of recommendation (75.8), Samoa is not in a position to lift its reservation in 28(1) of the CRC at this time for reasons mentioned in paragraph 26 of its national report.

Recommendations 75.13, 75.14, 75.15, 75.16 and 75.17

7. Samoa is in the process of ratifying the Convention on the Rights of Persons with Disabilities. The Government is implementing its National Work Plan towards the ratification of the convention. Furthermore, a National Policy for Persons with Disabilities is now being implemented. A Disability Taskforce has been established and a Focal Point Unit for Persons with Disabilities has been set up within the Ministry of Women, Community and Social Development to coordinate all national activities and implementation of national policies for persons with disabilities.

8. A number of personnel of this Ministry inclusive of a person with disability will undergo professional training in Australia this year on mainstreaming disability and gender in national development plans and on the implementation of the convention to prepare Samoa for national implementation when it becomes a State Party. Financial assistance has also been requested from the Government of Australia to assist with a cost benefit analysis of membership in the Convention.

Recommendation 75.18

9. Samoa undertakes to consider and assess its accession to the Convention on the Protection of the Rights of All Migrant Workers and Members of their Families relative to its ability to meet treaty obligations.

10. Samoa is party to the eight fundamental human rights International Labour Organisation conventions. Government ensures that labour standards and regulations as prescribed by these ILO conventions are complied with.

Recommendation 75.19

11. Samoa accepts the recommendation to take further steps to promote the protection of human rights and will continue to work closely with other governments and regional and international organizations in this regard, including the UNOHCHR, the Commonwealth, the Pacific Islands Forum Secretariat and the Secretariat of the Pacific Community.

12. With respect to accession to ICESCR and CERD, Government will continue its assessment of the implications of membership to make sure it is able to deliver on the prescribed obligations upon becoming a State Party.

Recommendation 75.21

13. International conventions that Samoa is a Party to require to be domesticated in order for the provisions of such conventions to take effect in Samoa. Such provisions cannot be incorporated into domestic legislation until Samoa has acceded to the conventions and is a full State Party to the convention. Samoa therefore rejects the recommendation as is currently formulated.

II. National Human Rights Institution

Recommendations 75.22, 75.23, 75.24, 75.25

14. The Government of Samoa will continue to work with governments and regional/international organizations towards the establishment of an institutional mechanism to monitor and promote human rights. Much of the ground work for the establishment of a National Human Rights Commission has been undertaken. With international assistance, Samoa is engaging a consultant to draft the necessary legislation for the establishment of this institution. A strategic plan on the requirements for the establishment of this institution is also being drafted, taking into account Samoa's characteristics including its culture, policies and legislation. The remaining work will also require further technical and financial assistance from development partners to achieve.

15. It is anticipated that this institution will also be charged with all public awareness campaigns to ensure public understanding of the role of the human rights monitoring institution once it is fully established and the services it may offer. A number of public awareness campaigns have also been conducted in the context of the UPR national consultations and the Law Reform Commission's training on violence against women project.

III. Promotion and Protection of Human Rights

Recommendation 75.26

16. A National Council on the Convention on the Rights of the Child, which serves as a policy making and monitoring body on the implementation of the Convention in Samoa, already exists under the aegis of the Ministry of Women, Social and Community Development. It is envisaged that the proposed National Human Rights Commission once functional will be the independent institution charged with promoting and monitoring the implementation of all human rights conventions that Samoa is a party to.

Recommendation 75.27

17. National Plans for the implementation of certain human rights conventions that Samoa is a party to already exist and are being executed. Legislative Compliance Reviews to identify gaps in domestic legislation have been conducted for CEDAW and CRC and the same shall be done for CRPD.

Recommendation 75.28

18. Measures are already in place to promote gender balance. There are no institutional or legal impediments to women holding senior positions in government or in the legislative assembly of Samoa. Men and women have equal rights to compete for any position and to openly contest in free and democratic elections, which are held every five years. The perceived balance however is being addressed through advocacy and several leadership programs targeting women and girls. There is also a focus on increasing the number of women in politics in the National Policy for Women and Plan of Action.

IV. Domestic Legislation

Recommendations 75.29 and 75.30

19. In implementing goal 3 of the MDGs, gender equality, the provision of opportunities and an enabling environment to promote the empowerment of women are identified in Samoa's national development plan, the Strategy for the Development of Samoa 2008-2012. Furthermore, the core policy area for the Samoa National Policy for Women 2010-2015 and the Community Sector Plan is the promotion of gender equality at all levels. A Domestic Violence Unit was set up within the Ministry of Police and Prisons in 2007. A No Drop policy has been enforced and a Samoa Family Safety Bill has been drafted for the purpose of addressing violence against women.

20. There is no gender based discrimination in any Samoan legislation. Following the consolidation of all of Samoa's laws in 2007, all laws are now written in gender balance language. Furthermore, the Constitution of Samoa guarantees to every Samoan certain fundamental human rights including freedom from discriminatory legislation. The Constitution also promotes the rule of law and remedies for the enforcement of these fundamental rights in Samoa.

Recommendation 75.31, 75.32

21. Since 2007, all laws are now written in gender balance language. No legislation exists that discriminate against people with disabilities. Moreover, Samoa has no legislation that encourages any form of torture and other cruel, inhumane and degrading treatment of punishment. The death penalty has been abolished. The Constitution of Samoa guarantees fundamental human rights for all persons and protects persons from such treatment. As such, Samoa does not accept these two recommendations as they are not relevant.

V. Prison Facility

Recommendation 75.33

22. The Ministry of Police and Prisons has already built four additional prison cells in the main prison compound since June 2011. Prisoners do not have access to single cells but in groups of eight to ten per cell. A church and a common area/hall were also built in the main prison compound as a joint project between the Government and inmates to encourage rehabilitation and reintegration into society.

23. Furthermore, a new Police unit was opened in Afega on 29 June 2011. The additional station is part of a plan by the Ministry of Police to set up posts all over the country to ensure that their services are accessible by everyone. Government has also undertaken facility improvements to the prison in Vaito'omuli, Savaii. Samoa would welcome any human rights observers to monitor conditions within the prisons.

Recommendation 75.34

24. Prisons are divided into two separate facilities – one allocated for women and the other for men. Prisoners under the age of 17 are kept at Olomanu Rehabilitation Centre, a separate facility. The facility at Tafaigata for women prisoners is located 50 metres away from the male prison. The treatment of female prisoners is distinct from their male

counterparts and likewise with the chores they perform. All prisoners have access to medical assistance when required.

Recommendation 75.35

25. The Police Professional Standards Unit was established four years ago and there is room for improvement. Complaints from members of the public against members of the police force are now being dealt with in an efficient and timely manner. There is also a Police Adviser from the Australian Federal Police who is currently working with the unit under the Samoa/ Australia Police Project. The Unit would welcome any further training to strengthen its capability in this important area.

VI. Equality and Non-discrimination

Recommendation 75.36

26. The age remains the same at 17 years, however the Young Offenders Act 2007 provides for youth to be tried in a Youth Court Division rather than in the Supreme Court (except in the case of murder) and community sentences are also used depending on the severity of the crime committed. The Family Safety Bill contains amendments to change the age of a child in some legislation to 18 years, to ensure that they are provided and cared for until this age is reached.

27. The Samoa Law Reform Commission is working on Care and Protection legislation for children and reviewing all laws of Samoa to ensure that our laws comply with international standards in all areas and in protecting the rights of children, youth, women, men as well as persons with disability. Through this review, the recommendation to bring criminal responsibility of children in line with international standards may be considered as part of this project.

Recommendation 75.37

28. Samoa accepts the recommendation but will not be able to make progress in the medium term.

Recommendation 75.38, 75.39, 75.40 and 75.41

29. We reject these recommendations. There have not been formal charges before the Courts based on sexual orientation and gender identity and if so, the courts would rule them out as discriminatory. The Constitution of Samoa protects right of every person regardless of gender. Decriminalizing sexual activity of sodomy is not possible at this time because of cultural sensitivities and Christian beliefs of the Samoan society.

30. The Samoa Law Reform Commission's work on considering domestic legislation is a work in progress/ongoing.

Recommendation 75.43

31. The Constitution of Samoa promotes and protects the rights of all these groups.

VII. Religion

Recommendation 75.42

32. The findings of the Commission of Inquiry were released to the public in August 2011 and have already been published in local newspapers.

VIII. Conclusion

33. The Government of Samoa remains committed to the promotion and protection of human rights of all persons in Samoa. Programs and projects implemented by the Government in either the health or education sectors, in water, youth, women, energy, environment and many others are developed and executed with a view to improving the livelihoods of people and facilitate access in order for every Samoan to enjoy their basic human rights. Challenges remain however. The Government will continue to strive to address these challenges in cooperation with development partners including international and regional organizations in the area of human rights.
