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Samoa Victim Support Group – ECPAT
Submission to the Second Cycle of the Universal Periodic Review of
SAMOA

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Samoa Victim Support Group (SVSG) was established in 2005 to provide integrated, personalised and professional service to all survivors of crime. The Samoa Victim Support Group seeks to protect and promote the rights of children, ensuring victims of domestic violence and sexual abuse are well-supported, safe and in control of restoring their lives. Since 2013, the Samoa Victim Support Group has been a member of ECPAT (End Child Prostitution, Child Pornography and Trafficking of Children for Sexual Purposes), a global network of civil society organisations dedicated to ending the commercial sexual exploitation of children. ECPAT has 85 members in 77 countries across eight regions in the world.

The Samoa Victim Support Group – ECPAT submission to the Universal Periodic Review of Samoa

1. The Samoa Victim Support Group (SVSG) and ECPAT welcome the opportunity to contribute to the second cycle of the Human Rights Council's Universal Periodic Review (UPR) of Samoa. In this submission, the SVSG and ECPAT bring to the attention of the Human Rights Council's Working Group on the UPR (Working Group) and to the Human Rights Council (Council) six issues concerning the State's need to take more effective and widespread measures to address commercial sexual exploitation of children in Samoa: (1) the need to accede to the Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography and recognise all conduct involving sexual exploitation of children as criminal offences under national law; (2) the need to accede the *Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime*, recognising trafficking in persons as a criminal offence under national law; (3) the need to allocate more funding to protection, support, recovery and rehabilitation services for child victims in Samoa; (4) the need to enact a comprehensive anti-trafficking law and national policy; (5) the need to raise public awareness on sexual exploitation, especially trafficking in children for sexual purposes; (6) the need to engage in more research on the sexual exploitation of children in travel and tourism in Samoa.

(1) ACCEDE TO THE OPTIONAL PROTOCOL ON THE SALE OF CHILDREN, CHILD PROSTITUTION AND CHILD PORNOGRAPHY

First Cycle UPR Recommendation: 75.9, 75.10, 75.11, 75.12, take measures to ensure the signature and ratification of the two Optional Protocols to the Convention on the Rights of the Child

2. In its initial review before the UN Committee on the Rights of the Child in 2006, Samoa stated that it would ratify the *Optional Protocol on the sale of children, child prostitution and child pornography* (OPSC) after it completed a situational analysis on the situation of sexual exploitation of children in Samoa. The Government completed the situational analysis in 2006 in partnership with UNICEF, yet almost ten years later, Samoa has still not ratified or acceded to the Optional Protocol.

3. During the adoption of the first cycle Report of the UPR Working Group, the Government of Samoa made the following statements, 'Samoa...undertakes to accede to the two Optional Protocols of the Convention on Rights of the Child...' adding that '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....'¹ Four years later, the Government has still not acceded to either Protocol.

4. There are currently no domestic laws criminalising specific offences involving sexual exploitation of children in Samoa. According to the SVSG, when there is an allegation of sexual exploitation, more general criminal laws are used to prosecute the perpetrator, relying on the offence of 'carnal knowledge' or 'indecent assault.' These general criminal offences do not capture the specific intent and complex nature of sexual exploitation of children, nor do they provide penalties that are commensurate to the gravity of the offence. It is imperative that the Government take immediate actions to accede to the OPSC.

(2) ACCEDE TO THE PROTOCOL TO PREVENT, SUPPRESS AND PUNISH TRAFFICKING IN PERSONS, ESPECIALLY WOMEN AND CHILDREN

5. Samoa recently acceded to the *United Nations Convention against Transnational Organized Crime*,² however is not a State party to the *Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime*. Currently there is no anti-trafficking legislation in Samoa. In other words, the offence of trafficking in children for sexual purposes is not a crime in Samoa. Law enforcement authorities have had to resort to general provisions under domestic criminal law to

investigate and prosecute allegations involving trafficking; however, such provisions do not capture the complexity and specificity of the offence nor do they provide for penalties commensurate to the gravity of the offence. It is imperative that Samoa take immediate steps to accede the *Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime*, and enact national laws defining and criminalising conduct amounting to trafficking in persons in compliance with the provisions under the Protocol.

(3) MORE STATE SUPPORT AND FUNDING OF CHILD PROTECTION, RECOVERY AND REHABILITATION SERVICES IN SAMOA

First Cycle UPR Recommendation 77.31: Further enhance measures against violence against women and children, including ensuring appropriate assistance to victims and active detection efforts by law enforcement authorities

6. During the first cycle of the Universal Periodic Review of Samoa, the Government of Samoa highlighted in its National Report, ‘the tremendous amount of collaborative work between the Government...and NGOs to address this scourge in Samoa society.’³ The State further noted the close partnerships between itself and relevant non-governmental organisations (NGOs), ‘most notably the Samoa Victim Support Group (SVSG)...in ensuring victims of domestic violence are cared for in the legal justice system, in providing shelter and refuge for victims and counselling for victims and propagators.’⁴ In the Report of the UPR Working Group, there was further mention that the Government provided ‘funding assistance to support [SVSG’s] programmes for victims of violence and the shelters it operates.’⁵ In the adoption of the UPR Outcome Document, the Government of Samoa accepted recommendation 77.31, pledging to enhance measures to child victims of sexual violence.

7. Despite the Government’s undertaking in the first cycle, there continues to be no shelters for women victims of violence in Samoa. The only shelter services available in Samoa are provided by SVSG, which provides shelter facilities for children and overnight shelters for women victims of violence. Despite the State’s public statement of praise and support for the shelters operated by SVSG, there has been little State funding for these programmes. The SVSG has had to seek funding from international donor agencies; partner with churches and other faith-based organisations; and seek funds from the business community in order to continue operating the shelter facilities and caretaker facilities.

8. It is imperative that the Government allocate more resources for the care and recovery of child victims of sexual exploitation to address the rights of child victims more comprehensively and to allocate more resources to non-State providers of protection, recovery and reintegration services. One avenue would be to reform the Samoa Child Care and Protection Bill 2013 to ensure more resources are allocated to address the needs of child victims of sexual violence and exploitation.

(4) A COMPREHENSIVE NATIONAL ANTI-TRAFFICKING POLICY

First Cycle UPR Recommendation 73.33: Enact a comprehensive anti-trafficking law and make proactive efforts to identify and assist trafficking victims

9. During the first cycle of the Universal Periodic Review of Samoa, the Government did not provide the Working Group with any concrete measures that it was taking to address trafficking in persons for sexual purposes. During the review, a recommendation was brought by the United States of America to ‘enact a comprehensive anti-trafficking law and make proactive efforts to identify and assist trafficking victims.’

10. Despite the Government’s insistence that trafficking in persons is not an issue in Samoa, allegations of trafficking in children have been referred to SVSG from neighbouring territories such as American Samoa. Samoa has also been identified as a country used as a transit point for trafficked persons.⁶ The SVSG is concerned by the overwhelming lack of understanding and awareness of trafficking amongst the general public. The Government must enact a comprehensive and national policy to address trafficking in persons, which includes acceding to international instruments; enacting

an anti-trafficking law which criminalises the offence of trafficking in line with international standards; and engaging in capacity building and awareness raising on the issue.

(5) MORE AWARENESS RAISING ON SEXUAL EXPLOITATION, SPECIFICALLY ON TRAFFICKING IN PERSONS

11. During the first cycle of the Universal Periodic Review of Samoa, one of the recommendations adopted by the Government was to engage in additional campaigns to elevate public awareness on domestic violence. The Working Group highlighted the success of a previous government-funded campaign in 2009, ‘Say NO to Rape,’ which sought to change public attitudes towards violence against women. The SVSG recognises the importance and value of public awareness raising. Between 2011 and 2013, the SVSG engaged in a public awareness campaign through the *Stronger Communities Project* to address violence against women. The campaign was funded by the UN Women Trust Fund to End Violence against Women. The project involved grassroots advocacy at the village level and sought to change attitudes and perceptions surrounding violence against women. The campaign also sought to create an advocacy platform to seek new legislation to help victims of violence rebuild their lives. The project was a success, empowering villages to take ownership and responsibility in creating violence-free communities. The coming into effect of the Family Safety Act 2013 saw the creation of a Family Court with exclusive jurisdiction to handle family related matters. Through the legislation, the SVSG alongside other NGOs have been empowered to assist victims and work with perpetrators to prevent and address domestic violence against women.

12. The SVSG recommends engaging in a similar campaign to raise public awareness and address public attitudes towards sexual exploitation of children, specifically trafficking in children for sexual purposes.

(6) MORE RESEARCH ON THE ISSUE OF THE SEXUAL EXPLOITATION OF CHILDREN IN SAMOA

13. There is a paucity of data on the issue of sexual exploitation of children in Samoa. Samoa is a popular tourist destination: tourism comprises 20 to 25 per cent of its national gross domestic product.⁷ Sexual exploitation of children through travel and tourism is present; however, the extent of the problem is unknown. The SVSG continues to receive information and cases of alleged perpetrators engaging in sexual exploitation through travel and tourism; however, to date, there has been no comprehensive or systematic study of the issue. One known case took place in 2003, involving a 49-year old Australian who sexually exploited a 15-year old girl. The man was convicted of indecent assault, due to a lack of specific legislation related to sexual exploitation, and sentenced to 2 years and 9 months imprisonment.⁸ In 2011, the SVSG received information of a tourist allegedly engaged in sexual exploitation of children; however, when the SVSG initiated proceedings on the case, the perpetrator sought assistance from government officials to flee the jurisdiction.

14. The lack of credible data renders it difficult for the Government or policy makers to forge an appropriate and effective national response to the issue. The SVSG calls on the Government to engage in a national study on sexual exploitation of children.

RECOMMENDATIONS

11. The SVSG and ECPAT call upon the Working Group and the Council to urge the Government of Samoa to:

Concerning the need to accede to the Optional Protocol on the sale of children, child prostitution and child pornography

- i). Take steps to immediately accede to the *Optional Protocol on the sale of children, child prostitution and child pornography*;
- ii). Enact legislation criminalising all conduct related to the sale of children, child prostitution and child pornography, in compliance with the definitions under article 2 and article 3 of the *Optional Protocol*;

- iii). Enact legislation to ensure the extraterritorial application of any criminal laws relating to the sexual exploitation of children;
- iv). Ensure Samoa enacts laws to enable and facilitate the extradition of perpetrators accused of criminal offences involving sexual exploitation of children;
- v). Extend an invitation at the earliest opportunity to the UN Special Rapporteur on Sale of Children, Child Prostitution and Child Pornography to undertake an official mission in Samoa and extend all reasonable cooperation and assistance to facilitate a timely and effective country mission;

Concerning the need to accede to the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime

- vi). Take steps to immediately accede to the *Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime*;

Concerning the need to allocate more State funding to the protection, recovery and rehabilitation of child victims of sexual exploitation

- vii). Allocate more State funding and support to care and recovery services for child victims of sexual exploitation, notably funding shelters for child victims of sexual exploitation;
- viii). Reform the Samoa Child Care and Protection Bill 2013 to explicitly require State funding and State support in the provision of care, recovery and rehabilitation services for child victims of sexual violence and exploitation;
- ix). Allocate more State funding, specifically from the Office of the Attorney General, the Ministry of Justice and Courts Administration and the police, to support child victims engaged in the justice process;

Concerning the need to enact comprehensive national anti-trafficking policy

- i). Enact a comprehensive anti-trafficking national action plan to address the issue of trafficking in persons at multiple levels;
- ii). Enact national anti-trafficking legislation criminalising all conduct related to trafficking in persons, especially children, in line with article 3 and article 5 of the Protocol;
- iii). Enact comprehensive anti-trafficking legislation, providing assistance and protection to victims of trafficking in persons, in line with articles 6, 7 and 8 of the Protocol;
- iv). Enact legislation to enable the identification of victims, in line with articles 10 and 11 of the Protocol;
- v). Enact legislation to strengthen measures to prevent trafficking in persons, in line with articles 9, 12 and 13 of the Protocol;
- vi). Engage in capacity building with law enforcement and the justice sector on trafficking in persons;
- vii). Extend an invitation at the earliest opportunity to the UN Special Rapporteur on Trafficking in Persons, Especially Women and Children to undertake an official mission in Samoa and extend all reasonable cooperation and assistance to facilitate a timely and effective country mission;

Concerning the need for more awareness raising on sexual exploitation

- viii). Engage in a public awareness campaign focused on educating the public on sexual exploitation of children, similar to previous campaigns on violence against women;
- ix). Engage in a public awareness campaign focused on educating the public on trafficking in persons, similar to previous campaigns on violence against women;

Concerning the need for more research on the sexual exploitation of children in travel and tourism

- x). Engage in a situational analysis or national study which focuses on sexual exploitation of children in travel and tourism;
 - xi). Present the findings of the Study to relevant ministries of the Government and other key stakeholders with the aim of developing a national action plan to address sexual exploitation of children in travel and tourism.
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ENDNOTES:

¹ United Nations Human Rights Committee, *Report of the Working Group on the Universal Periodic Review – Samoa, Addendum*, 21 September 2011, UN Doc. A/HRC/18/14/Add. 1 (‘UPR Working Group – Addendum’)

² *United Nations Convention against Transnational Organized Crime*, 2225 U.N.T.S 209, entered into force 29 September 2003. Samoa acceded to the *United Nations Convention against Transnational Organized Crime* on 17 December 2014, see United Nations Treaty Collection website, accessed at:

https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=XVIII-12&chapter=18&lang=en

³ United Nations Human Rights Council, Working Group on the Universal Periodic Review, 11th Session, *National Report submitted in accordance with paragraph 15(a) of the annex to Human Rights Council resolution 5/1 – Samoa*, 14 February 2011, UN Doc. A/HRC/WG.6.11.WSM/1, para 45. (‘National Report – 1st Cycle, Samoa’)

⁴ *Ibid.*

⁵ United Nations Human Rights Council, Universal Periodic Review, 11th Session, *Report of the Working Group on the Universal Periodic Review – Samoa*, 11 July 2011, UN Doc. A/HRC/18/14, para 12. (‘Outcome Document – 1st Cycle, Samoa’)

⁶ Ofa ki vaha Palu Toki, ECPAT Child Alert, *Ofa he mata ‘o e fanau: A review of legislations, policies and practices related to the commercial sexual exploitation of children in Fiji, Samoa and Tonga* (ECPAT, 2012), p 41. (‘Review of legislation in Samoa’)

⁷ Review of legislation in Samoa, p 37.

⁸ Review of legislation in Samoa, p 42.