

INTRODUCTION

1. The Samoa Victim Support Group (SVSG) is a non-government organization established in 2005 to provide integrated, personalized and professional service to all survivors of crime, especially, women and children. SVSG is a recognized Human Rights Champion by UNESCO, Child Safe Organization by UNICEF Pacific, and a Woman-led Organization¹. It operates mainly on donations and project-based funding from development partners.
2. This is the second submission by SVSG to the Human Rights Council Periodic Review of Samoa. This review covers the period from 3rd May 2016, the second cycle of Samoa's UPR reporting process, to the present time. This report assesses progress made on accepted recommendations, raises related concerns, and makes recommendations. Our review focuses on areas that relate directly to our work, with a particular emphasis on the six issues raised in the previous cycle, five of which remain unimplemented².
3. The selected human rights areas are: (i) Shelter for Victims and Care Services (ii) Rehabilitation and Reintegration of Victims and Perpetrators (iii) Child Care and Protection Policy Framework (iv) Legal Aid Services and (v) Exploitation and Trafficking-in-Persons.

METHODOLOGY

4. The information used in this report is derived from: (i) SVSG casefiles and databases (ii) SVSG community surveys (iii) staff interviews and (iv) human rights reports and media releases.

FREEDOM FROM VIOLENCE

5. We applaud the Governments' recognition of its citizens' right to live free from violence, especially, its approach to focus on the protection and welfare of women and children³. However, we are greatly concerned that realizing freedom from violence for women and children is impaired by an apparent: (i) lack of enforcement, (ii) inadequate operational support for implementing authorities and related NGOs, and (iii) poor allocation of Government resources and time. As a consequence, there has been no or minimal reduction in violent crimes within Samoa. Reports of violence received by SVSG over 5 year periods have increased from 1348 reports (2010-2014) to 1474 reports (2015-2019)⁴.

Shelter for Victims and Care Services

Second Cycle Recommendations:

95.49- Take all necessary measures to prevent and stop domestic violence, including through providing shelters for persons under threat, in coordination with the “Samoa Victims Support Group” (Brazil)

95.57- Set up a shelter for victims of sexual abuse and violence (Maldives)

6. The above recommendations were accepted by the Government during the 2nd UPR Cycle. Prior to that, during the 1st UPR Cycle, the Government also promised that their Community Sector Program would “...facilitate financial and technical support to NGOs providing services in this area...”⁵ To date, the Government has neither made any efforts towards the establishment of any state shelter for victims of violence, nor have they provided any financial assistance to existing NGO shelters. This is disheartening given the noted increase in violence in Samoa and the subsequent need for shelters for abused women and children.
7. SVSG is the only NGO that offers shelter for victims of violence and neglect. The maximum capacity at any one time is a 100 people⁶. However, the number of people housed by SVSG is known to exceed its limit by at least 20%. This has worsened due to the Covid-19 outbreak. In recognition of this infrastructural need, SVSG in partnership with the Japanese Embassy has commenced construction for a new Domestic Violence Centre for women in addition to the four existing shelters. Yet, the pledges by our Government remain unfulfilled.

Recommendations

8. Immediately provide financial assistance for existing shelters and related support services.
9. Establish state shelters for women within the next two (2) years, in coordination with SVSG.

Rehabilitation and Reintegration of Victims & Perpetrators

Second Cycle Recommendations:

95.59 - Establish effective and transparent mechanisms to prevent violence, in particular against women, girls and boys, and ensure that these mechanisms are allocated with the necessary capacity and resources to be operational (Mexico)

95.56 - Establish effective child abuse reporting mechanisms and ensure the appropriate remedy and rehabilitation for child victims (Malaysia)

10. The Government has not made any concrete efforts to fulfill the above recommendations which they have accepted.

11. In terms of victim rehabilitation and reintegration, SVSG is the only NGO operating Shelter Facilities for abused children in Samoa. Rehabilitation programmes is one of its priorities. SVSG together with UNICEF Pacific, provide relevant programmes such as, counselling, livelihood training, and continuing education and family assessments. SVSG's Child Protection Policy includes a reintegration guideline which is strictly followed to prevent re-victimization of children upon reintegration. There are no similar Government services in Samoa.
12. The Family Court and Drugs and Alcohol Court are significant developments by the Government. However, their impact is limited by the absence of state rehabilitation and reintegration services. For example, the Family Court makes direct orders for perpetrators of violence to attend SVSG counselling programmes. These sessions span from 6-8 weeks and include rehabilitative components such as, anger management and relationship counselling. The effectiveness of these programmes is indicated by the fact that, recidivism is less than 1%⁷. These programmes are wholly self-funded by SVSG, but may be discontinued due to lack of resources.

Recommendations

13. Immediately provide financial and technical support to NGO's offering rehabilitative and reintegration programmes.
14. Target the root cause of violence within our communities and develop programmes that address these directly, for example, the SVSG Nofotane Programme promotes the economic empowerment of women as poverty has a direct correlation on domestic violence in the rural areas⁸.
15. Establish state funded services or programme for the rehabilitation and social reintegration of victims and offenders alike by the next UPR Cycle.

Child Care and Protection Policy Framework

Second Cycle Recommendations

95.61 - Further protect children against violence and child labor through the strengthening of legislation, in order to safeguard their well-being and their right to education (Portugal)

16. We note the Governments' effort to improve child care policy frameworks, especially, through the Child Care and Protection Bill. However, the time and resources spent on these reforms are extremely disappointing whilst the children's safety and critical needs remain unmet. This Bill was proposed since 2012, yet, approximately 9 years later, it has not been enacted. SVSG through their extensive experience with child care operations within Samoa, identifies two practical provisions that are missing for the protection of children: (i) it does not establish any state shelters for Ministry of Women Community Social Development to refer children to, and (ii) it does not provide any financial assistance for care providers in order to encourage child fostering and improve the standard of child care.
17. The critical needs for children at risk of harm are, shelters and direct care services, such as, counselling, education, clothing, and food. In 2019, SVSG had to provide shelter for 133 children under the age of 18, this increased to 166 children in 2020⁹. Amongst these children, were children with disabilities and abandoned infants. SVSG struggles to provide for these children, but have no other choice as there is no Government refuge.

Recommendations

18. Minimize resource expenditure by working in coordination with experienced NGOs such as SVSG for effective child care legal reforms and implementation.
19. Amend the provisions of the Child Care and Protection Bill to establish state shelters for children and to mandate financial support for approved care providers.

Legal Aid Services

Second Cycle Recommendations:

95.55 - Ensure that women victims of violence receive appropriate help and perpetrators are brought to justice (Italy)

95.60 - Put in place comprehensive measures to prevent and address domestic violence and ensure that women have access to immediate means of redress and protection and that the perpetrators are prosecuted (Portugal)

First Cycle Recommendations:

74.25 - Improve equal access to justice, including legal assistance and information and education about legal and human rights to those who cannot afford private representation (Canada)

20. In the Samoa State National UPR Report (2016), the Government cited the enactment of the *Community Law Centre Act 2015* as a step towards equal access to justice¹⁰. The Act establishes a state institution that provides legal assistance to people who cannot afford a lawyer for criminal and civil matters. The Centre was highly anticipated as the existing legal aid system in Samoa is only available for persons accused of criminal offences. It has been approximately six (6) years now since the Act was passed, but the Centre has not opened.
21. There are no free legal services for victims; yet, victims require assistance with, compensation, divorces, employment grievances, mediation, child custody and maintenance. SVSG and Police are only able to assist victims with obtaining Protection Orders. Due to the high cost for qualified and competent legal personnel, no NGO in Samoa has an in-house legal counsel or provides free comprehensive legal services. Therefore, this is an area the Government must be responsible for.

Recommendations

22. Open the Community Law Centre from the financial year starting July 2022, or, immediately permit the existing legal aid scheme administered by the Ministry of Justice Courts and Administration (MJCA) to pay or subsidize legal services for victims and destitute persons.
23. Fund legal advisors for local NGOs, or mandate existing Government lawyers to assist NGOs with any and all legal matters they encounter throughout their work with the community.

PROHIBITION OF EXPLOITATION & TRAFFICKING-IN-PERSONS

Second Cycle Recommendations

95.58 - Develop a national action plan to combat trafficking in persons that includes measures for the rehabilitation of victims and training of the officials involved in investigating these crimes (Mexico)

First Cycle Recommendations

73.33- Enact a comprehensive anti-trafficking law and make proactive efforts to identify and assist trafficking victims (USA)

24. The above recommendations were fully accepted by Samoa during the First and Second UPR Cycle. Since then, the Government has made the following efforts:
 - a) Enactment of the *Crimes Act 2013*, section 155, prohibits trafficking in people and states the maximum penalty as 14 years imprisonment and section 157 prohibits the exploitation of persons for labor and sex¹¹;

- b) Ratification of the *United Nations Convention against Transnational Organized Crime*¹²; and
- c) Drafting of the *Policy Guidelines for the Management of Transnational Crimes of Trafficking in Human Beings and Smuggling of Migrants*¹³.

25. We acknowledge the above steps taken by the Government but submit that their progress is limited, slow and incompatible with combating the forms of Trafficking-in-Persons (TIP) existing within Samoan communities. SVSG in their CSO Stakeholder Report 2016 also raised the need for comprehensive anti-trafficking laws, national awareness and capacity building for law enforcement, but, this was ignored by Government. Now, there are new reports of TIP but these could have been addressed sooner or even prevented.

Exploitation and Trafficking-in-Persons Violations

26. The recent NZ case of *R v Joseph Auga Matamata* [2020] NZHC (27th July 2020), depicts how people from Samoa are trafficked overseas and exploited for labor. A Samoan Chief residing in NZ was sentenced to 11 years in jail and ordered to pay \$183,000 in reparation to 13 complainants after he was found guilty of 13 charges of dealing in slaves and 10 of trafficking in persons¹⁴. The victims of his crimes were Samoan citizens whom he had brought from his home community in Samoa to work in New Zealand. The fact that this crime occurred over a 25-year period from 1994 before it was reported in 2018 highlights the weaknesses with local immigration policies and systems, as well as, the need for national awareness campaigns for human trafficking.

27. Other issues of TIP occurring in Samoa are the recruitment of foreigners to Samoa for work, but, are exploited for forced labor and sex. A common complaint has been from Fijian nationals hired as domestic workers by Samoan families¹⁵. They are initially promised specific salaries and benefits, and allocated limited duties. However, their agreed upon terms are not complied with upon arrival into Samoa and in some cases, their travel documents are seized by employers and they are prohibited from leaving designated residences. SVSG has dealt with such reports but are unable to instigate any criminal charges as it is perceived as a “employment dispute”.

28. SVSG has also received reports of forced marriage and relationships between women and girls and foreign businessmen residing in Samoa. The victims in such incidents fear reporting the problem to authorities due to insensitive attitudes and victimization labels such as ‘prostitute’.

Crimes Act 2013

29. The Crimes Act 2013 does not provide comprehensive anti-trafficking provisions. Section 155 expresses and perceives trafficking-in-persons as a transnational crime only. It does not recognize internal or domestic trafficking which can occur within a country. As a consequence, internationally recognized forms of TIP that are occurring within Samoa and

reported to SVSG, such as, commercial marriages, forced labor, forced children vendors, and forced begging are not considered criminal offences.

30. Similarly inadequate, is Section 157. It prohibits exploitation of persons for forced labor and sex, however, this is deemed only as an offence when dealing with persons under the age of 18. There are no similar provisions to protect persons 18 years of age and older.

Recommendations

31. Immediately amend section 155 of the Crimes Act 2013, to recognize internal trafficking and to align with international human rights standards of trafficking-in-Persons.
32. Immediately amend section 157 of the Crimes Act 2013, to remove the age limit of 18 years.
33. Engage in a public awareness campaign focused on educating the public on trafficking-in-persons and the exploitation of persons.
34. Provide training and support to law enforcement, prosecutors and judges about Trafficking-in-Persons, especially, with victim identification and investigations.
35. Accede to the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Conventions against Transnational Organized Crimes.

ENDNOTES

¹ Sapeer Mayron, "Samoa Celebrates 70th Anniversary of Human Rights Declaration" (12th December 2018) <https://www.samoobserver.ws/category/samoa/11043> and Samoa Victim Support Group Website: www.samoavictimsupport.org.

² SVSG UPR 2nd Cycle Submission (21st September 2015), Issues raised: (1) accede to the Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography (completed); (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.

³ Main Government progress: (a) Enacting of the Family Safety Act 2013; (b) Enacting of the Crimes Act 2013 which recognizes marital rape and other sexual offences against women and children; (c) Establishment of a specialized Family Court in 2014; (d) Establishment of a specialized Drugs and Alcohol Court in 2015; (e) Enacting of the Community Law Centre Act 2015; and (f) Drafting of the Childcare Protection Bill.

⁴ Samoa Victim Support Group Casework Analysis 2005-2020

⁵ A/HRC/WG.6/11/L.12

⁶ SVSG has 4 established, however, they use their training facilities as a shelter if there is an overwhelming need

⁷ SVSG Advocacy Database

⁸ SVSG Nofotane Programme was funded by the EU and Canada High Commission (NZ). This Project focuses on the economic empowerment of women living in their spouses families. Activities include: basic financial literacy skills, handicraft making, commercial cooking, sewing, etc. The Project is very successfully and has promoted the rights of participants as decision makers and leaders within their families and rural communities.

⁹ Samoa Victim Support Group Child Protections Services Report Jan –Nov 2019 and Jan- Nov 2020

¹⁰ A/HRC/WG.6/25/WSM/1

¹¹ Crimes Act 2013, section 155, “155. Trafficking in people by means of coercion or deception – (1) A person is liable to imprisonment for a term not exceeding 14 years who: (a) arranges the entry of a person into Samoa or any other country by one (1) or more acts of coercion against the person, one (1) or more acts of deception of the person, or both; or (b) arranges, organises, or procures the reception, concealment, or harbouring in Samoa or any other country of a person, knowing that the person’s entry into Samoa or that other country was arranged by one (1) or more acts of coercion against the person, one (1) or more acts of deception of the person, or both.”

¹² Acceded to on the 17th December 2014

¹³ Greg Mills and ACP EU, *Policy Guidelines for the Management of Transnational Crimes of Trafficking in Human Beings and Smuggling of Migrants* (December 2017)

¹⁴ NZHerald Online, “Hawkes Bay Contractor Joseph Matamua jailed for Slavery, People Trafficking” (27 July 2020) <https://www.nzherald.co.nz/nz/hawkes-bay-contractor-joseph-matamata-jailed-for-slavery-people-trafficking/JHYSK4JP4Z3JZFHMHKGAMEZKRU/>

¹⁵ RNZ Online, “Fijian Workers felt like slaves in Samoa” (28 May 2018) <https://www.rnz.co.nz/international/pacific-news/358412/fijian-workers-felt-like-slaves-in-samoa>