

ACCESS TO JUSTICE FOR CHILDREN: SAMOA

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I. What is the legal status of the Convention on the Rights of the Child (“CRC”)?

A. What is the status of the CRC and other relevant ratified international instruments in the national legal system?

Samoa ratified the CRC in November 1994 with the following reservation: the government “reserves the right to allocate resources to the primary level sector of education in [Samoa] in contrast to the requirement of article 28 (1)(a) [of the CRC] to provide free primary education.”¹ As at the date of this report, Samoa has not ratified any of the Optional Protocols to the CRC.

The Samoan Constitution does not recognise international law as part of the law of Samoa.² Consequently, ratified international instruments are not automatically adopted as part of its domestic legal framework and it is necessary to enact appropriate domestic legislation to give them full domestic force.³

B. Does the CRC take precedence over national law?

The CRC does not take precedence over national law.

C. Has the CRC been incorporated into national law?

The CRC has not been incorporated into national law. There is no comprehensive or consolidated Children’s Act in Samoan law,⁴ rather provisions relevant to children can be found in the Constitution, Acts, Ordinances and Regulations.

The Constitution, which is the supreme law of Samoa, guarantees the protection of fundamental rights and freedoms, including: right to life; right to personal liberty; freedom from inhumane treatment; freedom from forced labour; right to a fair trial; freedom of religion; and freedom of speech, assembly, association, movement and residence.⁵ The breadth of terms could be construed as wide enough to encompass principles contained in the CRC, however, are equally ambiguous in their application.

The Young Offenders Act introduced in 2007 established a criminal justice system for offenders under the age of 17, setting up a youth court and specifying its jurisdiction

¹ UN Treaty Collection, ‘Convention on the Rights of the Child’, available at:

https://treaties.un.org/Pages/ViewDetails.aspx?src=IND&mtdsg_no=IV-11&chapter=4&lang=en.

² Constitution of the Independent State of Samoa 1960, Section 111, available at:

http://www.paclii.org/ws/legis/consol_act/cotisos438/.

³ Samoa Law Reform Commission, ‘Issues Paper IP 03/09: Care and Protection Legislation to Protect Children’, p. 6.

⁴ There is, however, a draft Child Care and Protection Bill, which will revolutionise the area of child care and protection: Comments provided by Judge Vui Clarence Nelson, Supreme Court of Samoa, August 2015.

⁵ Constitution, Part II.

and procedure. It also recognises the rights of a child to receive independent legal advice, to have the attendance of a parent, caregiver or family member at a hearing and the right to apply for legal aid.⁶

The Family Safety Act 2013 aims to protect family members, especially children and women, from domestic violence and sexual abuse. It allows complainants, including child victims, to apply for protection orders from the court.⁷

Other relevant laws include the following:

- Crimes Act 2013
- Criminal Procedure Act 1972
- Community Justice Act 2008
- Education Act 2009
- Compulsory Education Act 1994
- Maintenance and Affiliation Act 1967
- Mental Health Act 2007
- Youth, Sports and Cultural Affairs Act 1993/94
- Births, Deaths and Marriages Registration Act 2002
- Citizenship Act 2004
- Infants (Adoption) Amendment Act 2005
- Infants Ordinance 1961
- Labour and Employment Act 1972
- Divorce and Matrimonial Causes Ordinance 1961.⁸

D. Can the CRC be directly enforced in the courts?

The CRC cannot be directly enforced in the courts, however the Court of Appeal, the highest court in Samoa, held in *Attorney General v. Maumasi*⁹ that “all Samoan Courts should have regard to [the CRC] in cases within its scope”. This decision has been held to be “a clear mandate to the courts of this country to have regard to the provisions of the Convention in appropriate cases”.¹⁰

E. Are there examples of domestic courts using or applying the CRC or other relevant international instruments?

Samoan courts have applied the principles of the CRC without its incorporation into domestic law. Cases involving the physical and sexual abuse of children have been held to fall within the scope of the CRC:

- In *Police v. Faiga*, the defendant, a 31-year-old male, was charged with the indecent assault of an 8-year-old girl. In sentencing the defendant, the Supreme Court considered the principles of the Convention, particularly Articles 19(1)

⁶ Young Offenders Act 2007, Section 9, available at: http://www.pacii.org/ws/legis/consol_act/yoa2007181/.

⁷ Family Safety Act 2013, available at: http://www.pacii.org/ws/legis/consol_act/fsa2013151/.

⁸ Note, however, that many of these laws (e.g the Infants Ordinance 1961, Maintenance and Affiliation Act 1967) are currently under review, and there is significant new legislation under consideration (e.g. Child Care and Protection Bill): Comments provided by Judge Vui Clarence Nelson, Supreme Court of Samoa, August 2015.

⁹ [1999] WSCA 1, CRIN summary available at: <https://www.crin.org/en/library/legal-database/attorney-general-v-maumasi>.

¹⁰ *Police v Faiga* [2008] WSSC 96, CRIN summary available at: <https://www.crin.org/en/library/legal-database/police-v-faiga>.

and 34, which require states to “take all appropriate national measures” to prevent the sexual abuse of children. Nelson J found the defendant guilty, holding that “a child has the inalienable right to be protected from such behaviour. More than lip service must be paid to the provisions of the Convention.”

- In *Police v. Tuiloma*,¹¹ another case involving the sexual abuse of child, Vaai J sentenced the defendant to three years’ imprisonment, stating that the CRC “requires and obligates society to undertake to protect the child from all forms of sexual exploitation and sexual abuse”.
- In the Court of Appeal decision of *Police v. Kum*,¹² the lower court judge was rebuked for failing to have regard to the CRC when sentencing the defendant.

Courts have also considered the CRC in relation to children in conflict with the law, such as in the cases of *Police v. Vailopa*¹³ and *Ulugia v. Police*.¹⁴

II. What is the legal status of the child?

A. Can children and/or their representatives bring cases in domestic courts to challenge violations of children's rights?

The Supreme Court (Civil Procedure) Rules 1980,¹⁵ the District Courts Act 1969¹⁶ and the Magistrates’ Courts Rules 1971¹⁷ (together the “Civil Procedure Rules”) provide that “infants” and their representatives are entitled to bring civil cases in Samoan Courts to challenge violations of their rights. An “infant” is defined as a person under the age of 21.

In criminal cases, any person who has reasonable cause to suspect that an offence has been committed may initiate proceedings by laying information for that offence.¹⁸ In some cases, the prosecutor must seek the consent of a judge or the Attorney General before bringing proceedings.¹⁹

The Samoan Constitution provides that “persons” may apply to the Supreme Court to enforce the “fundamental rights” conferred under the provisions of Part II (see part I.C above).²⁰ Proceedings for judicial review may also be instituted by filing a motion seeking an extraordinary remedy at the Supreme Court.²¹

¹¹ [2008] WSSC 101.

¹² [2000] WSCA 6, CRIN summary available at: <https://www.crin.org/en/library/legal-database/police-v-kum>.

¹³ [2009] WSSC 69, CRIN summary available at: <https://www.crin.org/en/library/legal-database/police-v-vailopa>.

¹⁴ [2010] WSCA 15, CRIN summary available at: <https://www.crin.org/en/library/legal-database/ulugia-v-police>.

¹⁵ Supreme Court (Civil Procedure) Rules 1980, Rule 37, available at: http://www.paclii.org/ws/rules/ct_rules/scpr1980378/.

¹⁶ District Courts Act 1969, Section 43(3), available at: http://www.paclii.org/ws/legis/consol_act/dca1969205/.

¹⁷ Magistrates’ Courts Rules 1971, Rule 14, available at: http://www.paclii.org/ws/rules/ct_rules/mcr1971281/.

¹⁸ Criminal Procedure Act 1972, Section 11, available at: http://www.paclii.org/ws/legis/consol_act/cpa1972188/.

¹⁹ *Ibid.*, Section 14.

²⁰ Constitution, Article 4(1).

²¹ *Amoa v. Land and Titles Court* [2011] WSSC 77 (31 January 2011); Supreme Court (Civil Procedure)

Under the Family Safety Act, any complainant or any person acting on their behalf (including village representatives, child welfare officers or social workers)²² may apply to the District Court for a protection order.²³ A complainant under the Family Safety Act includes a child in the care of a complainant. A police officer receiving a report of domestic violence from a complainant under the age of 18 must refer such person to a child welfare officer.²⁴ Where a report of domestic violence involves any form of physical or sexual abuse, then provided there is sufficient evidence, the police have a duty to prosecute and cannot subsequently withdraw such charges.²⁵ Failure to comply with these obligations constitutes police misconduct, for which disciplinary proceedings may lie against the officer concerned under the Police Service Act 2009.²⁶

The Office of the Ombudsman has the power to investigate complaints against public authorities and officials.²⁷ Any individual, company, organisation or association with an interest in the subject matter may make a complaint and investigations are made in private.²⁸ Alleged violations of fundamental rights and freedoms, as well as human rights, are within the Ombudsman's duty to investigate as complaints of unreasonable treatment.²⁹ The Ombudsman does not however have the authority to investigate complaints against private individuals or companies, or decisions of courts and statutory tribunals. If the Ombudsman finds that a particular authority has been at fault in some way, it may recommend that action be taken to rectify the situation. If such authority does not accept the recommendation, the Ombudsman may then make a report to the Prime Minister and the Parliament.

B. If so, are children of any age permitted to bring these cases by themselves in their own names/on their own behalf, or must the case be brought by or with the assistance of a representative?

Children (persons under 18) must be represented by a guardian *ad litem* in order to bring claims to court.³⁰ A guardian *ad litem* is not permitted to retire without the leave of the court.³¹ A guardian *ad litem* may be removed by the court upon sufficient cause being shown,³² in which case the court will appoint a new guardian *ad litem*.³³

There are limited instances where a child may sue without a guardian *ad litem*. The District Courts Act provides that infants may sue in a Magistrates' Court for money which may be due to them "for wages or piecework... in the same manner as if [they are] of full age".³⁴ Under the Family Safety Act, any child (defined as a person under the age of 18) may apply to the District Court for a protection order without the

Rules 1980, Part XIX.

²² Family Safety Act 2013, Section 4(3).

²³ Ibid., Section 4(1).

²⁴ Ibid., Section 15(2)(c).

²⁵ Ibid., Section 16.

²⁶ Comments provided by Judge Vui Clarence Nelson, Supreme Court of Samoa, August 2015.

²⁷ Ombudsman (Komesina o Sulufaiga) Act 2013, Section 18.

²⁸ Website of the Office of the Ombudsman Samoa, available at: <http://ombudsman.gov.ws/>.

²⁹ Ibid; Ombudsman (Komesina o Sulufaiga) Act 2013.

³⁰ Supreme Court (Civil Procedure) Rules 1980, Rule 37; Magistrates' Courts Rules 1971, Rule 14.

³¹ Supreme Court (Civil Procedure) Rules 1980, Rule 39.

³² Ibid., Section 38.

³³ Ibid., Section 40.

³⁴ District Courts Act 1969, Section 43(1).

assistance of a parent or legal guardian.³⁵

C. In the case of infants and young children, how would cases typically be brought?

Such cases would typically be brought by the child's guardian *ad litem*, as described in part II.B above. If the courts have committed a child to the care of a child welfare officer pursuant to the Infants Ordinance 1961, such officer may exercise the same powers and rights in respect of that child as if he or she were the child's guardian.³⁶

D. Would children or their representatives be eligible to receive free or subsidised legal assistance in bringing these kinds of cases?

The Ministry of Justice and Courts Administration administers legal aid. Eligibility to access legal aid is determined based on the financial capacity of the offender and the degree of seriousness of the offence. A child in conflict with the law is entitled to apply for legal aid.³⁷ According to Samoa's report to the Committee on the Rights of the Child, legal aid is available only in cases involving serious criminal offences, and is not available for civil proceedings. The Office of the Attorney General has acted as an advocate and provided legal representation to a child in family proceedings.³⁸

E. Are there any other conditions or limits on children or chosen legal representatives bringing cases (e.g., would a child's parents or guardian have to agree to a case being brought)?

The Civil Procedure Rules contain no additional limits on children or their chosen legal representatives bringing cases. The Family Safety Act explicitly states that a child may seek a protection order against domestic violence without the written consent of the complainant³⁹ and without the assistance of a parent, legal guardian or any other person.⁴⁰

III. How can children's rights violations be challenged before national courts?

A. If there is a potential violation of the Constitution or other principles established in domestic law, or with the CRC or other relevant ratified international/regional instruments, how can a legal challenge be brought?

Civil proceedings may be initiated in line with the Civil Procedure Rules.⁴¹ Where an action is brought against the government and is instituted against the Attorney General, the statement of claim must give additional particulars of the government departments and officers of the government involved.⁴²

³⁵ Family Safety Act 2013, Section 4(5).

³⁶ Infants Ordinance 1961, Section 17(a).

³⁷ Young Offenders Act 2007, Section 9.

³⁸ *Initial report of Samoa to the UN Committee on the Rights of the Child*, CRC/C/WSM/1, 16 February 2006, para. 138. Available at: http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CRC%2fC%2fWSM%2f1&Lang=en.

³⁹ Family Safety Act 2013, Section 4(4)(a).

⁴⁰ *Ibid.*, Section 4(5).

⁴¹ Supreme Court (Civil Procedure) Rules 1980, Rule 10.

⁴² *Ibid.*, Rule 15(3).

As stated in part II. A. above, the Samoan Constitution provides that “persons” may apply to the Supreme Court to enforce the “fundamental rights” conferred under the provisions of Part II. The Civil Procedure Rules do not differentiate between civil proceedings and challenges brought to enforce fundamental rights. The manner in which the challenge is brought (i.e. whether it is initiated as an action or a motion) would depend upon the remedy sought.

Proceedings for judicial review may be instituted by filing a motion seeking an extraordinary remedy at the Supreme Court.⁴³ Judicial review of a particular decision can be sought on the English common law grounds of illegality, irrationality and procedural impropriety.⁴⁴

B. What powers would courts have to review these violations, and what remedies could they offer?

Civil lawsuits may seek redress in the form of money damages or an injunction ordering a party to follow a particular cause of action. Criminal lawsuits punish offenders through fines and custodial sentences.

In an action to enforce fundamental rights, the Supreme Court has the power to make any orders which it considers necessary and appropriate to secure the applicant the enjoyment of any rights conferred by such provisions.⁴⁵ It also has the power to interpret the Constitution.⁴⁶ Any law which is found to be inconsistent with the Constitution will, to the extent of the inconsistency, be void.⁴⁷

Under the Infants Ordinance, if it appears to a court on its own motion in the course of any proceedings for an offence, or at any time on the application of a constable, that any child is at risk, the court may make an order for the committal of that child to the care of a child welfare officer. Where the District Court makes or refuses to make an order, it is possible to appeal to the Supreme Court.

Where proceedings for judicial review are instituted, the Supreme Court has the power to grant “extraordinary remedies”. These include issuing a “writ of mandamus” compelling an officer, person or tribunal to perform a particular duty; an injunction restraining them from breaching any duty; a writ of prohibition preventing an inferior court, tribunal or magistrate from exceeding its jurisdiction, and a writ of certiorari, directing the removal of a particular action from an inferior court or tribunal to the Supreme Court.

The Family Safety Act gives courts the power to issue a protection order if it finds, on the balance of probabilities, that the respondent has committed or is committing an act of domestic violence. The protection order prohibits a respondent from committing any act of domestic violence, entering a particular residence or place of employment or from committing any other act which the court considers appropriate to protect the complainant. The court may also impose additional conditions, including an order for the custody and maintenance of dependent children and may refuse the respondent

⁴³ Ibid., Rule 196.

⁴⁴ See for example *Amoa v. Land and Titles Court* [2011] WSSC 77 (31 January 2011).

⁴⁵ Constitution, Section 4(2).

⁴⁶ Ibid., Section 73(2).

⁴⁷ Ibid., Section 2(2).

contact with such children if the court considers it to be in their best interests. Breach of a protection order involving further sexual or physical abuse of the complainant is punishable by six months' imprisonment, as well as the punishments available for any other criminal charges brought against the respondent. Breach of any obligations imposed by the act incurs criminal liability and is punishable by a fine and/or imprisonment of up to two years.

C. Would such a challenge have to directly involve one or more individual child victims, or is it possible to challenge a law or action without naming a specific victim?

It is generally not possible to bring an action without naming an individual victim. However, section 33 of the Judicature Ordinance 1961 allows the Executive to seek the opinion of the Supreme Court on any question of constitutional interpretation, including the interpretation of any of the fundamental rights guaranteed to all citizens by the Constitution.⁴⁸

D. Is any form of collective action or group litigation possible, with or without naming individual victims?

Representative proceedings are permitted by the Civil Procedure Rules. When a number of persons have the same interest in an action, one or more of them may sue on behalf of all interested parties.⁴⁹ Furthermore, persons with any alleged right to relief in respect of or arising out of the same transaction or event may be joined as plaintiffs in one action where, if they brought separate actions, any common question of law or fact would arise.⁵⁰ The Court may also give an order joining plaintiffs at any stage of proceedings, either upon or without the application of either party.⁵¹ Likewise, one or more defendants may be sued as representative of a group of persons. But a person may not be joined as a plaintiff without his/her consent.⁵²

E. Are non-governmental organisations permitted to file challenges to potential children's rights violations or to intervene in cases that have already been filed?

There are no specific references to NGOs in the Civil Procedure Rules. However, with the plaintiff's consent, the court may at any stage of proceedings make an order joining any person who it considers ought to have been joined, or whose presence before the court it considers necessary to enable it completely to adjudicate upon and settle all the questions involved in the action.⁵³

IV. Practical considerations. Please detail some of the practical issues, risks and uncertainties that might be involved in bringing a case to challenge a violation of children's rights, such as:

A. Venue. In what courts could a case be filed (e.g., civil, criminal, administrative, etc.)? What would the initial filing process entail?

⁴⁸ Comments provided by Judge Vui Clarence Nelson, Supreme Court of Samoa, August 2015.

⁴⁹ Supreme Court (Civil Procedure) Rules 1980, Rule 36.

⁵⁰ Ibid., Rule 31; Magistrates' Court Rules 1971, Rule 11.

⁵¹ Supreme Court (Civil Procedure) Rules 1980, Rule 32.

⁵² Ibid., proviso to Rule 32; Comments provided by Judge Vui Clarence Nelson, Supreme Court of Samoa, August 2015.

⁵³ Ibid.

The courts of Samoa are structured as a hierarchy, with the Court of Appeal being the highest court, followed by the Supreme Court and then the District Court. Each of these courts exercise both civil and criminal jurisdiction.⁵⁴ The Youth Court, a branch of the District Court, hears all cases against children (between the ages of 10 and 17) charged with criminal offences. The District Court has jurisdiction to hear civil cases where the damages claimed are no more than \$10,000, and to hear criminal cases punishable by imprisonment of less than five years.⁵⁵

Cases concerning the enforcement of fundamental rights and proceedings for judicial review must be filed at the Supreme Court.⁵⁶ In terms of filing processes, Part III of the Supreme Court Rules provides that proceedings be commenced by way of “action” (where proceedings are for recovery of debt or damages or an order for specific performance) or “motion” (all other civil proceedings). Actions are commenced by filing and serving a statement of claim, whereas motions are commenced by filing a notice of motion, supported by an affidavit.⁵⁷

Proceedings for judicial review may be instituted by filing a motion seeking an extraordinary remedy at the Supreme Court, accompanied by a statement of claim and a supporting affidavit,⁵⁸ for certiorari, mandamus, prohibition or injunction.

Criminal cases (except where a person has been arrested without a warrant) must be commenced by the laying of an “information in writing”, which shall be in the form set out in a schedule to the Criminal Procedure Act 1972 and sworn before a registrar.⁵⁹ The information must contain such particulars as will fairly inform the defendant of the substance of the offence for which he/she is charged, and must be filed in the office of the court which has jurisdiction over the particular offence.⁶⁰ Except where expressly provided in a particular enactment, any person who has reasonable cause to suspect that an offence has been committed may lay an information for that offence.⁶¹ Any private citizen may therefore initiate a private prosecution by laying a criminal information.⁶²

- B. Legal aid / Court costs. Under what conditions would free or subsidised legal aid be available to child complainants or their representatives through the court system (i.e., would the case have to present an important legal question or demonstrate a likelihood of success)? Would child complainants or their representatives be expected to pay court costs or cover other expenses?

See part II.D above.

In the absence of any legal aid, the guardian *ad litem* would be liable for costs.⁶³

⁵⁴ Civil Procedure Rules (Issues Paper) 2012 [2012] WSLawRComm 1 (1 March 2012).

⁵⁵ District Courts Act 1969, Sections 23 and 36.

⁵⁶ Constitution, Article 4(2).

⁵⁷ Supreme Court (Civil Procedure) Rules 1980, Rule 12.

⁵⁸ *Ibid.*, Rule 196.

⁵⁹ Criminal Procedure Act 1972, Sections 10 and 13.

⁶⁰ *Ibid.*, Sections 16(1) and 19(1).

⁶¹ *Ibid.*, Section 11.

⁶² Comments provided by Judge Vui Clarence Nelson, Supreme Court of Samoa, August 2015.

⁶³ Supreme Court (Civil Procedure) Rules 1980, Rule 41.

- C. Pro bono / Financing. If legal aid is not available, would it be possible for child complainants or their representatives to obtain legal assistance from practising lawyers on a pro bono basis, through a children's rights organisation, or under an agreement that does not require the payment of legal fees up front?

Pro bono legal assistance is available but is not common in Samoa. As at the date of this report, the government is proceeding with the establishment of a community law centre to provide free legal services to the people of Samoa through volunteer lawyers, and have tabled the necessary legislation in Parliament.⁶⁴

- D. Timing. How soon after a violation would a case have to be brought? Are there any special provisions that allow young adults to bring cases about violations of their rights that occurred when they were children?

Timing requirements for bringing civil cases are set out in the Limitation Act 1975. Most claims must be filed within a period of six years from the date of the action in question.⁶⁵ Notably, suits to challenge public actions must be filed within one year.⁶⁶

For the purposes of the Limitation Act, children are grouped with those suffering from a disability.⁶⁷ In cases of disability, the six-year period does not begin to run until the person has ceased to be under a disability, i.e., in the case of children, until they have reached the age of majority.⁶⁸

As regards criminal cases, the Criminal Procedure Act provides that every information for an offence the maximum punishment for which does not exceed three months' imprisonment or a fine of one penalty unit or both must be laid within 12 months from the time when the offence is alleged to have been committed.⁶⁹ Other than this, there is no time limit for prosecuting historical complaints.⁷⁰

- E. Evidence. What sort of evidence is admissible/required to prove a violation? Are there particular rules, procedures or practices for dealing with evidence that is produced or presented by children?

The Civil Procedure Rules deal with the procedural requirements with regard to witnesses. However, there appear to be no specific procedures in place for dealing with evidence produced by children under these Rules.⁷¹

Under the Oaths, Affidavits and Declarations Act, all witnesses who are or appear to be under the age of 12 years may in any proceeding be examined without oath. Any such witness is required, before being examined, to make a declaration to tell the truth, and

⁶⁴ Samoa Law and Justice Sector, 'Establishment of a community law centre', available at: http://www.samoaljs.ws/english/index.php?option=com_content&view=article&id=171:establishment-of-a-community-law-centre&catid=59:current-projects&Itemid=95; Comments provided by Judge Vui Clarence Nelson, Supreme Court of Samoa, August 2015.

⁶⁵ Limitation Act 1975, Section 6.

⁶⁶ Ibid, Section 21.

⁶⁷ Ibid, Section 2(2).

⁶⁸ Ibid 1975, Section 22.

⁶⁹ Criminal Procedure Act 1972, Section 12.

⁷⁰ Comments provided by Judge Vui Clarence Nelson, Supreme Court of Samoa, August 2015.

⁷¹ Supreme Court (Civil Procedure) Rules 1980, Part VII.

such declaration is of the same force and effect as if the witness had taken an oath.⁷²

The Samoan Constitution provides for the exclusion of members of the public and representatives of news services from all or part of trials where the protection of children or parties' private lives require it.⁷³ Similarly, the Supreme Court and the Court of Appeal may make an order prohibiting the presence of certain persons under the Criminal Procedure Act.⁷⁴ The Criminal Procedure Act can be used to prevent child victims from having direct confrontation with persons accused of violating their rights, and from hostile, insensitive or repetitive questioning or interrogation.⁷⁵ The Evidence Ordinance 1961 empowers the court to exercise its discretion to limit or refuse the cross-examination of any witness as to credit.⁷⁶ Samoa follows the traditional common law practice that a child's evidence is admissible provided the judge is satisfied the child understands the need to tell the truth and nothing but the truth.⁷⁷

Courts may make an order prohibiting the publication of any report or account of the whole or any part of the trial, as well as the name, or any particulars likely to lead to the identification of, any person connected with the trial.⁷⁸ Regarding children in conflict with the law, proceedings in the Youth Court are closed to the general public and the media.⁷⁹ The Young Offenders Act automatically prohibits the publication of the name and identifying details of a victim involved in an offence for which a young person is charged.⁸⁰

According to a report by Samoa to the Committee on the Rights of the Child in May 2015, the Samoa Law Reform Commission has recommended that the Criminal Procedure Act should provide for the automatic suppression of the name and any particulars likely to identify a victim of a sexual offence, and that, during the taking of evidence from the victim, sexual offence proceedings should be dealt with in closed court.⁸¹ The government has stated that videoconferencing and other electronic means and formats such as high definition, digital or analog video recordings and audio recordings should be used to take testimonies of children as evidence.⁸² As at the date of this report, these changes have yet to be legislated. One Supreme Court is equipped to allow child testimony on TV beamed from an adjoining room so that the child is not in the physical presence of the defendant or anyone else, except for his/her parent or caregiver and a court official.⁸³

- F. **Resolution.** How long might it take to get a decision from the court as to whether there has been a violation?

⁷² Oaths, Affidavits and Declarations Act 1963, Section 10.

⁷³ Constitution, Article 9(1).

⁷⁴ Criminal Procedure Act 1972, Sections 61 and 164V.

⁷⁵ Ibid, Section 28.

⁷⁶ Ibid, Section 17.

⁷⁷ Comments provided by Judge Vui Clarence Nelson, Supreme Court of Samoa, August 2015.

⁷⁸ Ibid, Section 61.

⁷⁹ Young Offenders Act 2007, Section 8(1).

⁸⁰ Ibid., Section 8(3).

⁸¹ *Second to fourth periodic reports of Samoa to the UN Committee on the Rights of the Child*, CRC/C/WSM/2-4, 4 May 2015, para. 5.10. Available at: http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CRC%2fC%2fWSM%2f2-4&Lang=en.

⁸² Ibid., para. 8.33.

⁸³ Comments provided by Judge Vui Clarence Nelson, Supreme Court of Samoa, August 2015.

Decisions in the District Court are normally produced within two to four weeks of hearing. In the Supreme Court where cases are more complex, decisions are normally produced within one to three months for non-criminal matters and two to four weeks for criminal cases.⁸⁴

Under the Youth Offenders Act, where a child pleads not guilty to any charge, the Youth Court must conduct a defended hearing as soon as practicable.⁸⁵ The Court may dismiss any charge if the judge is satisfied that the time that has elapsed between the date of the commission of the offence and the hearing has been unreasonably delayed.⁸⁶

G. Appeal. What are the possibilities for appealing a decision to a higher court?

Decisions of the District Court in both civil and criminal proceedings (including the Youth Court)⁸⁷ may be appealed to the Supreme Court.⁸⁸ Appeals from decisions of the Supreme Court may be filed at the Court of Appeal in both civil and criminal cases. Either court may give leave for such appeal if it is of the opinion that the question involved is one that ought to be submitted by virtue of its public importance or the magnitude of interests affected.⁸⁹ The Court of Appeal also has jurisdiction to hear appeals from decisions of the Supreme Court in respect of breaches of fundamental rights under Part II of the Constitution.⁹⁰

H. Impact. What are the potential short-term and long-term impacts of a negative decision? Is there a possibility for political backlash or repercussions from a positive decision?

Samoa has a common law system. Courts are bound by their own and higher courts' decisions under the doctrine of *stare decisis*. This means a negative or positive decision could potentially have a lasting impact for years. Its impact will depend on whether it was a lower court or a higher court that decided the case as a higher court's decision will take precedence over the decisions of a lower court.

I. Follow up. What other concerns or challenges might be anticipated in enforcing a positive decision?

There are no concerns or challenges regarding enforcement.

V. Additional factors. Please list any other national laws, policies or practices you believe would be relevant to consider when contemplating legal action to challenge a violation of children's rights.

Sources of law

The law in force in Samoa includes:

⁸⁴ Comments provided by Judge Vui Clarence Nelson, Supreme Court of Samoa, August 2015.

⁸⁵ Young Offenders Act, Section 6(2).

⁸⁶ Ibid., Section 6(3).

⁸⁷ Young Offenders Act, Section 24.

⁸⁸ District Courts Act, Section 70.

⁸⁹ Judicature Ordinance 1961, Section 51.

⁹⁰ Constitution, Article 81.

- the Constitution;
- any Act of Parliament and any proclamation, regulation, order, by-law or other act of authority made thereunder;
- the English common law and equity for the time being in so far as they are not excluded by any other law in force in Samoa; and
- any custom or usage which has acquired the force of law in Samoa or any part thereof under the provisions of any Act or under a judgment of a Court of competent jurisdiction.⁹¹

National human rights institution

Samoa recently established a national human rights institution (NHRI) located within the Office of the Ombudsman. One of the core functions of the NHRI is to become actively engaged in the promotion and protection of children's rights in Samoa as well as to monitor compliance with the UN Convention on the Rights of the Child.⁹²

This report is provided for educational and informational purposes only and should not be construed as legal advice.

⁹¹ Ibid., Article 111.

⁹² Comments provided by Judge Vui Clarence Nelson, Supreme Court of Samoa, August 2015.