

# Legislative compliance of Samoa in relation to international child protection standards – FULL REPORT

**Please note:** A summary of this compliance table is available in the main child protection research report.

## Introduction<sup>1</sup>

The table here documents the compatibility of relevant domestic legislation against each child protection indicator and includes additional comments explaining the reasons, where considered necessary, behind each conclusion reached.

This list of child protection indicators was originally developed in 2008 by Penelope Taylor as part of UNICEF Pacific's baseline research in Fiji, Kiribati, the Solomon Islands and Vanuatu. The analysis for Samoa draws heavily on the 2006 report 'Convention on the Rights of the Child Legislative Compliance for Samoa' by MWCSO (in association with Penelope Taylor in her then role as Australian Youth Ambassador in Samoa), but relevant provisions have been updated to take into account new and amended legislation since 2006.

The legislation reviewed for the compliance analysis was limited to enacted legislation. No court decisions, bills currently before Parliament or delegated legislation, such as regulations and codes of conduct, was used in assessing levels of compliance. However, for interest, the table here does include references to the draft Family Safety Act 2011 as well as recommendations made by the SLRC for reform of the Crimes Ordinance 1961 and the Criminal Procedure Act 1972 which, if passed in the future, will have a significant impact on legislation relevant to child protection. Any references to court rulings, regulations or proposed legislation, should not be interpreted as a comprehensive review of these sources of law.

For each indicator, primary legislation was identified as either achieving full compliance, partial compliance or no compliance at all. Partial compliance was considered achieved where the available legislation on a subject met the standard set by the indicator in some areas and not others, or where the available legislation covered all relevant

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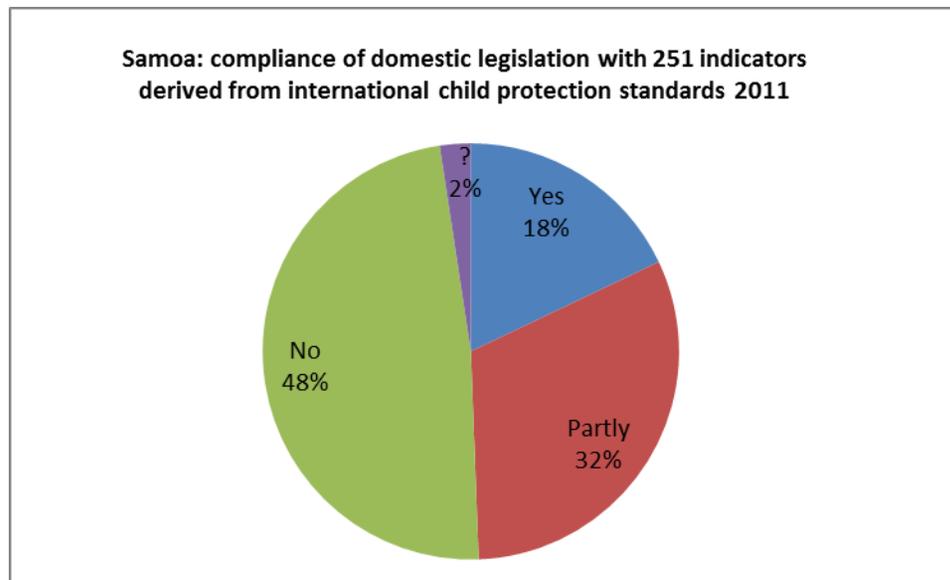
<sup>1</sup> Much of this introductory text has been taken and/or adapted from the report 'Convention on the Rights of the Child Legislative Compliance for Samoa', MWCSO 2006.

areas but did not meet fully the standard of protection required by the indicator. A recurring issue in identifying the degree of compliance with each indicator was the general lack of child specific references in the legislation. Many rights were provided for in legislation but these did not specify application to children. Technically, in any legislation, rights identified as being available to “any person” are also automatically available to minors, however, as identified in a number of commentaries on children’s legal rights, and specifically in the Committee’s General Comment No.5 (2003), the degree of meaningful legal protection afforded to the child is far greater where rights are identified in legislation as specifically applying to the child. In this context, an ideal law is one whereby rights specified as available to all persons should also be specified as applying to children. For the sake of technical legal accuracy, and maintaining clear boundaries to this analysis, the author ultimately chose to identify rights stated to be available to “all persons” as amounting to full compliance with the relevant indicator, but stresses that **the lack of specific reference to children is a major and recurring deficit in Samoa’s domestic legislation.**

Another recurring non-compliance which, arguably, has had a distorting impact on the final statistics for compliance from this analysis, is the availability of a child specific, independent complaints tribunal or ombudsman, other than the formal court process and existing ombudsman’s office, for those children whose rights under the law have been breached, and the absence of any punitive or restorative remedies for those breaches. Need to confirm with Ombudsman’s Office what the status is of the National Human Rights Commission being developed under its mandate and to what extent is this child specific. The need for such a complaints mechanism and accompanying remedies was identified in a number areas [...]

Where relevant legislation has been cited in the compliance table it has, in places, been paraphrased for economy of space and should not be cited as law without reference to the original legislation.

On final analysis, of the 251 indicators identified for compliance with international child protection standards, Samoa’s domestic legislation complied with 45 (18%), partially complied with 79 (32%), failed to comply with 121 (48%) and **6 (2%) are pending clarification.**



1 Child welfare/child protection system CRC Articles: 1, 2, 3, 4, 5, 6, 12, 18, 19 and 20			
Child protection indicator	Compliance	Relevant legislation	Comments
1(1): A national child protection law has been enacted to establish the framework for the provision of child and family protection services that:	No		Not specified in legislation, although there is a Cabinet-endorsed 'National Policy for Children in Samoa' (2010-2015). Work towards a 'child protection legislation' has commenced, with the Samoa Law Reform Commission conducting initial consultations with various members of the public to gather views for the write up of a 'Child Protection Legislation' issues paper. The Samoa Law Reform Commission is in the process of

			developing a second issues paper to be followed by further public consultations. It is anticipated that a final report with an attached draft care and protection legislation is scheduled to be finalised at the end of 2012.
1(1)(a): Establishes clear procedures and accountabilities for reporting, assessment and intervention in cases of children at risk and children who have experienced violence, abuse, neglect or exploitation.	<b>Partly</b>	<i>The Infants Ordinance 1961</i> – - S16 If it appears to the 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 living in a place of ill repute or is a neglected, indigent or delinquent child, or is not under proper control, or is living in an environment detrimental to its physical or moral well-being, the Court may make an order for the committal of that child to the care of a Child Welfare Officer.	
1(1)(b): Makes it mandatory for all persons to report suspected children at risk, and protects them from liability for doing so. Professionals working with children (health professionals, teachers, child care workers, etc) specifically relieved from confidentiality obligations. [This law to be enacted only in the context of a functioning and confidential child protection system].	<b>No ???</b>	Education Act 2009 -section 43 and 49 requires the principals of village schools and Ministry school to promptly report in writing to the Chief Executive Officer any suspected misconduct by a staff member.  -Any person over the age of 18 who has reasonable ground to suspect an incident of domestic violence is occurring at any time or place has the obligation to report to the relevant Village Fono if the incident is taking place in a village context or to the Police Station if the incident is taking place beyond the reach of the powers of a village Fono.	Not specified in legislation. These provisions do not apply to private schools. In the absence of interpretation in the Act as to what amounts to misconduct by a staff member it is unclear whether this includes those who infringe Part III.  -The definitions of domestic relationship and domestic violence under the Family Safety Bill limits this provision to incidents taking place within the domestic context.

<p>1(1) (c): Specifies the duties and powers of social welfare agencies and others to prevent child abuse and exploitation, to support children and families at risk, and to take protective measures where necessary</p>	<p><b>Partly</b></p>	<p><i>The Infants Ordinance 1961 –</i>  - S16 If it appears to the 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 living in a place of ill repute or is a neglected, indigent or delinquent child, or is not under proper control, or is living in an environment detrimental to its physical or moral well-being, the Court may make an order for the committal of that child to the care of a Child Welfare Officer.</p>	
<p>1(1) (d): Provides for a child-friendly reporting and complaints system e.g. telephone helplines.</p>	<p><b>No</b></p>		<p>Not specified in legislation although there is a National Crime Hotline (toll-free / 24 hours for all crime reporting – not child-specific) and the FLO Youth Hotline (toll-free / 24 hours). Furthermore, Digicel has pre-programmed the police number into all of its mobile phones which can be called, even without credit. Samoa Victim Support launched their help line in July 2013)</p>
<p>1(1) (e): Promotes a coordinated and multidisciplinary response to children in need of protection.</p>	<p><b>No</b></p>		<p>Not specified in legislation, although the National Policy for Children in Samoa(2010-2015) states that networking, inter-agency cooperation and an ‘interagency response system’ are amongst the objectives in relation to child protection. The establishment of the ‘interagency response system’ and subsequent ‘road map’ for future actions is planned for 2010-2015.</p>
<p>1(1) (f): Specifies a variety of supportive and protective interventions that may be used (counselling, financial assistance, income generation support, family supervision orders, respite care, parental education, temporary foster or other alternative care,</p>	<p><b>No</b></p>		<p>Not specified in legislation.  In relation to prevention, the National Policy for Children of Samoa (2010-2015) includes broad outcomes for promoting and supporting positive parenting and the implementation of child protection-focused life skills and</p>

emergency shelter, education/vocational training assistance etc.), and procedures and criteria for applying those interventions.			livelihoods programmes for children.
1(1) (g): Prohibits separation of a child his/her family against their will except by order of a competent authority, and when necessary in the best interests of the child (see Family Separation and Alternative Care below).	<b>Partly</b>	<p><i>The Infants Ordinance 1961 –</i></p> <ul style="list-style-type: none"> <li>- s3 where the custody or upbringing of the child is in question the Court shall regard the welfare of the child as the first and paramount importance</li> <li>- s4 provides for separation of children from parents by Court application; court may make an order regarding custody and access on the basis of what seems just. Where it appears to the Court that the parents of a child are unfit to have custody, the Court may appoint some other person to be its guardian as seems fit.</li> <li>- s6(3) right of appeal to the Supreme Court</li> <li>- s16(2) Where child is committed to the care of a Child Welfare Officer, right of appeal to the Supreme Court.</li> </ul> <p><i>The Divorce and Matrimonial Causes Ordinance 1961 –</i></p> <p><b>-s 7D.</b> A decree of divorce does not take effect unless the Court has, by order, declared that it is satisfied that proper arrangements in all the circumstances have been made for the care, welfare and development of those children the marriage under the age of 18 years.</p> <ul style="list-style-type: none"> <li>- s24 custody awarded on the basis of what appears just. The Court, if it thinks fit, may direct proper proceedings to be taken for placing the children under the protection of the Court.</li> </ul>	<p>Although the welfare of the child is identified as the most important principle in determining issues of custody, this is compromised by the provision requiring that custody be awarded on the basis of what the Court considers just. Full compliance with this indicator requires that the best interests of the child be the sole basis for determining custody and access issues</p> <p>The <i>Divorce and Matrimonial Causes Ordinance 1961</i> states that the Court must take into consideration the interest of children under the age of 18 years old before making a decree of divorce unless clear reasons are stated of why the Court shall proceed to make such an order without such consideration.</p> <p>The Attorney General can join divorce and matrimonial proceedings as one of the parties upon the request of the Court or intervene,, contest or ague any question in relation to an order relating to the welfare of a child.</p>

		- <b>26E</b> The Attorney-General can intervene in, and contest or argue any question in relation to an order relating to the welfare of a child.;	
1(1) (h): Defines the legal obligation on the State to provide alternative care for children without parental care or who cannot in their best interest be permitted to remain in parental care, and the forms of alternative care to be provided (foster care, kinship care, guardianship, adoption and institutional care) – see Family Separation and Alternative below.	<b>Partly</b>	<i>The Infants Ordinance</i> 1961 – - s16 If it appears to the Court ... that any child is living in a place of ill repute or is a neglected, indigent or delinquent child, or is not under proper control, or is living in an environment detrimental to its physical or moral well-being, the Court may make an order for the committal of that child to the care of a Child Welfare Officer - s4 If it appears to the Court that the parents of a child are unfit to have custody and upbringing the Court may appoint some other person to be its guardian ..as seems fit	The Court may arrange for care and protection by the State when it considers such protection necessary, but the State is not explicitly required to provide such care and protection in legislation.
1(1) (i): Requires the best interests of the child be the paramount consideration in any decision affecting the child, couched in a Constitutional guarantee as well as in specific welfare/child protection legislation.	<b>No</b>	[Family Safety Act 2013 - - s10(3) [...] where the court is satisfied that it is in the best interests of any child, it may- (a) refuse the respondent [i.e. alleged perpetrator of domestic violence] contact with such child; or (b) order contact with such child on such conditions as it may consider appropriate.]	No reference to children in the Constitution.  The National Policy for Children of Samoa (2010-2015) preface from the Minister of MWCSD states that “The Government and people of Samoa through the MWCSD are committed to ensuring that the best interests of the child be a primary consideration in all decisions or actions that affect the child or children as a group.”  The existing <i>Infant Ordinance 1961</i> is undergoing review to ensure that the best interest of the child is the paramount consideration in any decision affecting the child.  However, in relation to decisions pertaining to

			<p>divorce and matrimonial matters the <i>Divorce and Matrimonial Causes Ordinance</i> 1961 contains provisions which provides for the mandatory consideration to the interest of a child before the court makes certain orders.</p> <p>The Attorney General may intervene to contest or argue any question arising in any such proceeding under the <i>Divorce and Matrimonial Causes Ordinance</i> for or in relation to an order relating to an order relating to the welfare of a child.</p>
1(1) (j): Specifies criteria for establishing the best interests of the child.	<b>No????</b>	<i>Divorce and Matrimonial Causes Ordinance</i> s.24 <i>Custody of Children</i>	<p>The Court makes provisions that it deems just with respect to the custody, maintenance, and education of the children, the marriage of whose parents is the subject of the proceedings.</p> <p>On the other hand, where it thinks fit, the Court may undertake direct proper proceedings to place such children under its protection.</p>
1(1) (k): Requires that the views of the child be sought and respected in any decision about intervention or support services and their right to privacy upheld.	<b>Partly</b>	<p><i>Births, Deaths and Marriages Registration Act</i> 2002 –</p> <ul style="list-style-type: none"> <li>- s26 Parent cannot register a change of name of a child over 16 years of age without the consent of the child to the name change</li> <li>- s29 Court may order the name of a child be changed but must take into account the views of the child before making such an order where the child is over 16 years of age</li> </ul> <p><i>The Infants Ordinance</i> 1961 –</p> <ul style="list-style-type: none"> <li>- s12 Adoption of a child over 12 not permissible</li> </ul>	<p>Limited provision for the child's views to be heard under specified circumstances, but not a clear, overarching right in all matters affecting the child.</p> <p>Court is empowered to prohibit publication but there is no blanket prohibition on media identification of children involved in legal proceedings</p> <p>The provisions empower the Courts to order</p>

	<p>without the child's consent</p> <p><i>The Constitution of the Independent State of Western Samoa Act 1960 –</i></p> <ul style="list-style-type: none"> <li>- s9(1) ...but the public and representatives of the news service may be excluded from all or part of the trial ...where the interests of juveniles or the protection of the private life of the parties so require...</li> </ul> <p><i>The Criminal Procedure Act 1972 –</i></p> <ul style="list-style-type: none"> <li>- s61 Court may exclude the public and representatives of news services from all or part of the trial and prohibit the publication of the name, or of any particulars likely to lead to the identification of, any person connected with the trial(SLRC recommended that the CPA should provide for the automatic suppression of the name and any particulars likely to identify a victim of a sexual offence. It is further recommended that during the taking of evidence from the victim, sexual offence proceedings should be dealt with in closed court.)</li> </ul> <p><i>Crimes Ordinance 1961 –</i></p> <ul style="list-style-type: none"> <li>- s84 Everyone who publishes a defamatory libel is liable to imprisonment up to 6 years (check this our recommendation to remove this accepted and not in the new Crimes Bill)</li> </ul> <p><i>The General Laws (No 2) Ordinance 1932 –</i></p> <ul style="list-style-type: none"> <li>- s11 Words spoken and published which impute unchastity or adultery of any female shall not require special damage to render them actionable</li> </ul> <p>-</p>	<p>the full protection of the identity of the child victim but do not require that they do so. Full compliance with this indicator requires that the identity of child victims be required to be protected by law.</p> <p>Some general defamation protection is provided but it is not child specific.</p>
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1(1) (l): Minimum standards have been established for the professional qualification, training and ethical conduct of social workers and individuals working in institutions caring for children, and accreditation required.	<b>No</b>		
1(1) (m): Minimum standards have been established for the types and quality of support services to be provided to children in need of protection and their families, governing services provided by both government and non-governmental service providers.	<b>No</b>		
1(1) (n): Accreditation required to operate as any institution, service and facility responsible for the care or protection of children.	<b>No</b>	<i>Infants Ordinance</i> 1961 – - s9A No person in Samoa or elsewhere shall act as or call themselves an adoption agency unless the person has the prior written authorization to do so from the Attorney-General.	Legislation and Constitutional provisions in relation to institutions and services responsible for the care of children generally make no reference to accreditation.
1(1) (o): No discriminatory provisions contained in existing child protection/welfare system legislation	<b>No</b>	<i>The Constitution of the Independent State of Western Samoa Act</i> 1960 – - s15(4) Nothing in the constitutional anti discrimination provisions will affect the operation of any existing law or the maintenance by the State of any executive or administrative practice being observed on Independence Day	Explicitly condones any discriminatory provisions existing in legislation or the practice of the executive or administration at independence. Other specific discriminatory provisions are identified elsewhere in this document, such as gender discrimination in the <i>Crimes Ordinance</i> 1961 discussed under Indicator 3.
1(1) (p): Independent, child-friendly, avenue of complaint for children for consideration and resolution of complaints in relation to service providers within the child protection and social welfare framework.	<b>No</b>	<i>The Komesina o Sulufaiga (Ombudsman) Act</i> 1988 – - Provides for an Ombudsman’s office to investigate any complaints by individuals in relation to treatment by listed public institutions. - s13 All complaints must be made in writing.	Investigation limited to specified public institutions, the service is not specified to cater for children. Nor is it set up in a child accessible way – for example, complaints must be in writing. There is a risk that children’s complaints in a non-child-specific service could be dismissed as frivolous.

			A National Human Rights Institution is being established under the Ombudsman's Office. This can be an avenue to hear any such complaints in the near future although not child specific.
1(1) (q): Informal customary processes relating to child welfare and protection recognized in law and standards of care established and applied.	<b>Partly</b>	<p><i>The Crimes Ordinance 1961 –</i></p> <ul style="list-style-type: none"> <li>- s77 Everyone who, as a parent or person placed in the position of a parent in accordance with Samoan custom, is under a legal duty to provide the necessaries of life for any child under the age of 14 years...</li> </ul> <p>[Family Safety Act 2013 s26(1) proposes increasing the age limit here to 18 years]</p> <p><i>The Labour and Employment Act 1972 –</i></p> <ul style="list-style-type: none"> <li>- s3 The provisions of this Act shall not apply to ... service rendered to a <i>matai</i> under the <i>aiga</i> system ...</li> <li>-</li> </ul>	Customary practices specifically excluded from the reach of provisions providing protections for children in employment
1(2): A national overarching policy on Child Protection and family welfare is in place, further defining the legal framework (where necessary), specifying:	<b>Yes</b>		Not specified in legislation but the National Policy for Children in Samoa(2010-2015) includes sections relevant to child protection and family welfare.
1(2) (a): Precise definitions of abuse, neglect and exploitation (if the law does not provide details)	<b>No</b>		This may be addressed in some degree through reform of the Crimes Ordinance 1961: SLRC Final Report recommends: #1. Gender-neutral language throughout; #3. Broader definition of 'rape'; #4. Broader range of perpetrators specified in positions of responsibility for children; #7. Inclusion of a

			<p>new offence where a person compels another person to engage in sexual behaviour; #8. 'Indecent assault' to apply to male and female victims of any age'; #9. Should criminalise situations where a person obtains consent to sexual behaviour by use of threats; #10. Rephrasing in relation to sexual exploitation of a person with significant impairment; #12. Repeal of sodomy and related offences; #16. Defining and criminalising child pornography.</p> <p>There is now a crime known sexual violation in the Crimes Bill 2011 and defined in s, 49 of the Crimes Bill 2011.</p> <p>Sexual conduct with a family member. Section 56 of Crimes Bill criminalises a sexual connection between a person and a dependent family member under the age of 21years old.</p> <p>Neglect – ss. 77, 78 and 79 of the Crimes Bill 2011</p> <p>Sexual exploitation s.151 (3) of Crimes Bill 2011</p> <p>Divorce and Matrimonial Causes Ordinance provides a definition of domestic violence. (s. 26A)</p>
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			The Family Safety Act 2013 includes a detailed and expansive definition of 'domestic violence'.
1(2) (b): Guiding principles including at least: the best interest of the child, non-discrimination, family preservation, participation, continuum of services, and permanency planning.	<b>Partly</b>		Not specified in legislation. National Policy for Children in Samoa(2010-2015) includes non-discrimination, best interests, life survival and development, and respect for the views of the child as its 'Policy Guiding Values and Principles' (p.10).
1(2) (c): Child protection operational areas involve prevention, tertiary intervention and out-of-home care (all child and family focused)	<b>Partly</b>	<p><i>The Infants Ordinance 1961 –</i></p> <ul style="list-style-type: none"> <li>- s16 If it appears to the Court ... that any child is living in a place of ill repute or is a neglected, indigent or delinquent child, or is not under proper control, or is living in an environment detrimental to its physical or moral well-being, the Court may make an order for the committal of that child to the care of a Child Welfare Officer</li> <li>- s4 If it appears to the Court that the parents of a child are unfit to have custody and upbringing the Court may appoint some other person to be its guardian ..as seems fit</li> </ul> <p><i>Education Act 2009 -</i></p> <ul style="list-style-type: none"> <li>- s22 Behaviour management – The principal and management authority of every school and the director and management authority of every early childhood education centre shall foster: (a) a caring, productive and safe environment for learning;</li> </ul>	The National Policy for Children in Samoa (2010-2015) emphasises prevention and the planned development of an 'interagency response system' for tertiary intervention. However, this is not very detailed. Specific arrangements for out-of-home care are not referenced.
1(2) (d): Government focal point for child and family welfare	<b>No</b>		This currently rests with the Women's Division of MWCSD, but the enabling legislation for MWCSD has not yet been formalised and is currently under review.
1(2) (e): Basket of essential services to be	<b>No</b>		National Policy for Children in Samoa (2010-

delivered to children and families			2015) outlines plans to support positive parenting initiatives, life skills and livelihood programmes for children, and to develop an inter-agency referral system in the future, but there is heavy reliance on NGOs to deliver services.
1(2) (f): Reference to sectoral policies and regulations (quality standards) on child and family welfare services provision	<b>No</b>		
1(3): Provisions are in place regarding child protection practice in emergency situations (natural and man-made disasters)	Partly	<p><i>Disaster and Emergency Management Act 2007</i> -</p> <ul style="list-style-type: none"> <li>- s13(1) All schools and tertiary institutions shall prepare response agency plans in accordance with any requirements imposed by the Disaster Advisory Committee. (2) The Plans shall aim to: (a) protect the welfare of students and staff during times of disaster or emergency through, inter alia, the provision of shelter, food, drinking water, clothing and other necessities of life; and (b) arrange for the safe accommodation of students until their tuition resumes or arrangements can be made for their return to their places of residence; and (c) continue or resume teaching as soon as practicable after the disaster or emergency abates; and (d) minimise any interruptions to the education offered to students; and (e) raise awareness amongst students and staff of the procedures to be undertaken and applied during disasters and emergencies.</li> <li>- s14 (3) [Other] bodies may liaise with the Disaster Advisory Committee in preparing their plans.- i.e. those responsible for representing the interests of: (a) hotel and tourist service operators; and (b) commercial and industrial interests; and (c) employees and workers in sectors likely to be affected by disasters and emergencies; and (d) non-</li> </ul>	Schools are explicitly required to prepare disaster management plans. It is not clear whether representatives of other settings covering non-school children (e.g. villages, NGOs, hotels and tourist service operators) are required to also prepare disaster management plans or whether this is voluntary.

		government organisations with an identified role to play in relation to disaster and emergency management; and (e) villages and other sectors of the community.	
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2 Family separation and alternative care CRC Articles: 1, 2, 3, 4, 5, 6, 9, 12, 20, 21 and 25			
Child protection indicator	Compliance	Relevant legislation	Comments
2(1): Family/Child Protection laws clearly define parental roles and responsibilities	Partly	<p><i>The Crimes Ordinance 1961 –</i></p> <ul style="list-style-type: none"> <li>- s77 Everyone who, as a parent or person placed in the position of a parent in accordance with Samoan custom, is under a legal duty to provide the necessaries of life for any child under the age of 16 years...</li> <li>-</li> <li>-</li> <li>-</li> <li>-</li> <li>- <i>Education Act 2009</i></li> </ul> <p>Section 4 to section 18 and a number of other provisions highlight the legal responsibilities of a carer in relation to the enrolment and monitoring attendance of a compulsory school-aged child under his or her care.</p> <p>Sections 20 and 21 specifies the responsibilities of a carer pertaining to the employment of a compulsory school-aged child</p>	<p>Reference is made in various pieces of legislation to specific roles and responsibilities of parents, but no comprehensive definition is provided. A comprehensive definition that takes into account the responsibility of ensuring a protective environment for children that facilitates their mental, social and physical wellbeing, and which extends to the age of 18 years, is recommended.</p> <p>Carer is defined under the <i>Education Act 2009</i> as including a parent, guardian or other person having the care or control of a child</p>
2(2): The law designates a competent authority to make determinations about	Yes	<p><i>The Infants Ordinance 1961 –</i></p> <ul style="list-style-type: none"> <li>- s4 provides for separation of children from</li> </ul>	

<p>when a child can be separated from his/her parents, and stipulates grounds and procedures for doing so. These decisions are subject to judicial review.</p>		<p>parents by Court application</p> <ul style="list-style-type: none"> <li>- s6(3) right of appeal to the Supreme Court</li> <li>- s16(2) Where child is committed to the care of a Child Welfare Officer, right of appeal to the Supreme Court</li> </ul> <p><i>Maintenance and Affiliation Amendment Act 2010 –</i> s4 [stipulates insertion of the following new section into Principal Act:</p> <ul style="list-style-type: none"> <li>- s12A. 1) The Court may make such orders as it considers appropriate in relation to the custody of a child; (2) [Such an order] may be made notwithstanding that a maintenance order has not been made in relation to the child who is the subject of the order; (3) A Registrar may make such interim orders as he or she considers appropriate in relation to the custody of a child.; (4) An interim order under subsection (3) may only be for a period of no longer than seven (7) days.]</li> </ul> <p><i>Family Safety Act 202013</i></p> <ul style="list-style-type: none"> <li>- s10(1) The Court may impose any additional conditions which it deems reasonably necessary to protect and provide for the safety, health or wellbeing of the complainant, including an order - (d) for the custody and maintenance of dependent children of both the complainant and the respondent pursuant to the provisions of the Infants Ordinance 1961 and the Maintenance and Affiliation Act 1967 respectively;</li> <li>- 10(4) [...] the Court must award interim custody of a child to the complainant where it is shown on the evidence before it that physical violence was</li> </ul>	
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		applied, used or inflicted by the respondent upon the complainant or to any child involved in the domestic relationship between the complainant and the respondent.	
2(3): The law requires that all cases dealing with the separation of children from their parents be dealt with speedily.	<b>No</b>		
2(4): The law requires that all cases dealing with the separation of children from their parents be dealt with confidentially and, where court proceedings are involved, in a closed court.	<b>Partly</b>	<p><i>The Constitution of the Independent State of Western Samoa Act 1960 –</i></p> <ul style="list-style-type: none"> <li>- s9(1) ...but the public and representatives of the news service may be excluded from all or part of the trial ...where the interests of juveniles or the protection of the private life of the parties so require...</li> </ul> <p><i>The Criminal Procedure Act 1972 –</i></p> <ul style="list-style-type: none"> <li>- s61 Court may exclude the public and representatives of news services from all or part of the trial and prohibit the publication of the name, or of any particulars likely to lead to the identification of, any person connected with the trial</li> </ul>	Court is empowered to prohibit publication but there is no blanket prohibition on media identification of children involved in legal proceedings.
2(5): Family laws stipulate that, when parents separate, the grounds for allocating parental responsibility are based on the individual child's best interests	<b>No</b>	<p><i>The Infants Ordinance 1961 –</i></p> <ul style="list-style-type: none"> <li>- s8 Adoption order for child over the age of 12 only permissible if the child consents to the adoption</li> <li>-</li> </ul> <p><i>Family Safety Act 2013</i></p> <ul style="list-style-type: none"> <li>- 10 (3) [...] where the court is satisfied that it is in the best interests of any child, it may- <ul style="list-style-type: none"> <li>(a) refuse the respondent [i.e. alleged perpetrator of domestic violence] contact with such child; or (b) order contact with such child on such conditions as it may consider appropriate.</li> </ul> </li> </ul>	Only one provision relating to the separation of the child from their parents takes into account the child's views.

<p>2(6): Family laws stipulate that, when parents separate, there is a presumption that children's best interests, unless proved to the contrary, are in maintaining contact with both parents</p>	<p><b>No</b></p>	<p><i>Family Safety Act 2013</i>  - 10 (3) [...] where the court is satisfied that it is in the best interests of any child, it may- (a) refuse the respondent [i.e. alleged perpetrator of domestic violence] contact with such child; or (b) order contact with such child on such conditions as it may consider appropriate.</p>	<p>Not specified in relevant legislation</p>
<p>2(7): Family laws stipulate that, when parents separate, the nature of the parents' relationship is explicitly excluded as a consideration in allocating parental responsibility.</p>	<p><b>Partly</b></p>		<p>No discriminatory provisions identified in legislation regarding separation of parent and child, but the nature of the parents' relationship is not explicitly excluded as a consideration in decision-making.</p>
<p>2(8): Family/child protection laws state that parents and children may be separated against their will by authorities only when it is in the best interests of the child and necessary for the child's protection, i.e. as a last resort</p>	<p><b>Partly</b></p>	<p><i>The Divorce and Matrimonial Causes Ordinance 1961 –</i>  - s24 custody awarded on the basis of what appears just. The Court, if it thinks fit, may direct proper proceedings to be taken for placing the children under the protection of the Court</p> <p><i>The Infants Ordinance 1961 –</i>  - s3 where the custody or upbringing of the child is in question the Court shall regard the welfare of the child as the first and paramount importance  - s4 court may make an order regarding custody and access on the basis of what seems just. Where it appears to the Court that the parents of a child are unfit to have custody, the Court may appoint some other person to be its guardian as seems fit.</p> <p><i>Family Safety Act 2013</i>  - 10 (3) [...] where the court is satisfied that it is in the best interests of any child, it may- (a) refuse</p>	<p>Although the welfare of the child is identified as the most important principle in determining issues of custody, this is compromised by the provision requiring that custody be awarded on the basis of what the Court considers just. Full compliance with this indicator requires that the best interests of the child be the sole basis for determining custody and access issues and that it be made explicit that separation should be a last resort.</p>

		the respondent [i.e. alleged perpetrator of domestic violence] contact with such child; or (b) order contact with such child on such conditions as it may consider appropriate.	
2(9): Family preservation is explicitly stated to be a priority in arrangements for child protection.	<b>Partly</b>	<p><i>The Divorce and Matrimonial Causes Ordinance 1961 –</i></p> <ul style="list-style-type: none"> <li>- s24 custody awarded on the basis of what appears just. The Court, if it thinks fit, may direct proper proceedings to be taken for placing the children under the protection of the Court</li> </ul> <p><i>The Infants Ordinance 1961 –</i></p> <ul style="list-style-type: none"> <li>- s3 where the custody or upbringing of the child is in question the Court shall regard the welfare of the child as the first and paramount importance</li> <li>- s4 court may make an order regarding custody and access on the basis of what seems just. Where it appears to the Court that the parents of a child are unfit to have custody, the Court may appoint some other person to be its guardian as seems fit.</li> </ul>	It is generally understood that this is a priority, as reflected in Samoan culture and common practice, but this is not stated explicitly in legislation.
2(10): There are legal limitations on the ability of parents to voluntarily give up their parental responsibilities (e.g. by admitting a child to an orphanage or other institution).	<b>Partly</b>	<p><i>Crimes Ordinance 1961 –</i></p> <ul style="list-style-type: none"> <li>- s77 Everyone who, as a parent or person placed in the position of a parent in accordance with Samoan custom, is under a legal duty to provide the necessaries of life for any child under the age of 16 years...</li> </ul>	Parental or extended familial care of children is reflected in Samoan culture and practice, and in the fact that there are no orphanages or similar type institutions in Samoa, but limitations on voluntarily giving up parental responsibilities are not stated explicitly in legislation. Due to the <i>aiga</i> system, it is not clear to what extent children are cared for primarily by their birth parents compared to members of the nuclear or extended family. Section 77 only protects children up to the age of 16.
2(11): Neglect arising from poverty	<b>No</b>	<i>Crimes Ordinance 1961 –</i>	No discriminatory provisions identified in

explicitly excluded as a grounds for child removal.		<p>- s77 Duty of parent/legal guardian to provide the necessities of life for any child under 16. Neglect leading to harm or death punishable by imprisonment up to 7 years.</p> <p><i>The Infants Ordinance 1961 –</i></p> <p>- s12 Any person having the custody or control of any child under the age or apparent age of 14 years who in a manner likely to cause such child unnecessary suffering or injury to its health wilfully ill-treats, neglects, abandons, or exposes such child or cause or procures such child to be ill-treated, neglected, abandoned, or exposed commits an offence and is liable to a fine or imprisonment up to one year. [Family Safety Act 2013 s26(1) proposes increasing the age limit here to 18 years]</p>	legislation regarding separation of parent and child, but this particular issue is not explicit.
2(12): All laws specifying the grounds justifying the separation of a child from their parents are free from discriminatory provisions.	<b>Yes</b>		No discriminatory provisions identified in legislation regarding separation of parent and child.
2(13): The law provides for standards/criteria for determining when a child should be separated from their parents by authorities.	<b>Yes</b>	<p><i>The Infants Ordinance 1961 –</i></p> <p>- s16 If it appears to the 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 living in a place of ill repute or is a neglected, indigent or delinquent child, or is not under proper control, or is living in an environment detrimental to its physical or moral well-being, the Court may make an order for the committal of that child to the care of a Child Welfare Officer.</p> <p>- s4 If it appears to the Court that the parents of a</p>	

		<p>child are unfit to have custody and upbringing the Court may appoint some other person to be its guardian ..as seems fit</p> <p><i>Family Safety Act 2013</i>s10(1) The Court may impose any additional conditions which it deems reasonably necessary to protect and provide for the safety, health or wellbeing of the complainant, including an order - (d) for the custody and maintenance of dependent children of both the complainant and the respondent pursuant to the provisions of the Infants Ordinance 1961 and the Maintenance and Affiliation Act 1967 respectively;</p> <p>- 10(4) [...] the Court must award interim custody of a child to the complainant where it is shown on the evidence before it that physical violence was applied, used or inflicted by the respondent upon the complainant or to any child involved in the domestic relationship between the complainant and the respondent.</p>	
2(14): The law specifies the alternative care options available such as family member care, foster care, adoption, institutional care etc.	<b>Partly</b>	<p><i>The Infants Ordinance 1961</i> –</p> <p>- s16 If it appears to the Court ... that any child is living in a place of ill repute or is a neglected, indigent or delinquent child, or is not under proper control, or is living in an environment detrimental to its physical or moral well-being, the Court may make an order for the committal of that child to the care of a Child Welfare Officer</p> <p>- s4 If it appears to the Court that the parents of a child are unfit to have custody and upbringing the Court may appoint some other person to be its guardian ..as seems fit</p>	The only options specified are committal to the care of a Child Welfare Officer or ‘some other person’. Full compliance with this indicator would require the full range of options to be stated more explicitly.
2(15): The law requires that priority be	<b>No</b>	<i>The Infants Ordinance 1961</i> –	Not specified in legislation, although this is

<p>given to placement of a separated child with members of their wider family, with appropriate support where necessary. Institutionalisation is explicitly a measure of last resort.</p>		<ul style="list-style-type: none"> <li>- s4 If it appears to the Court that the parents of a child are unfit to have custody and upbringing the Court may appoint some other person to be its guardian ..as seems fit</li> <li>- s16 Where child [receiving inadequate care] the Court may make an order for the committal of that child to the care of a Child Welfare Officer</li> </ul>	<p>common practice in line with Samoan culture.</p>
<p>2(16): The law requires that the best interest of the child be the primary consideration in making decisions about alternative care</p>	<p><b>No</b></p>	<p><i>The Divorce and Matrimonial Causes Ordinance 1961 –</i></p> <ul style="list-style-type: none"> <li>- s24 custody awarded on the basis of what appears just. The Court, if it thinks fit, may direct proper proceedings to be taken for placing the children under the protection of the Court</li> </ul> <p><i>The Infants Ordinance 1961 –</i></p> <ul style="list-style-type: none"> <li>- s3 where the custody or upbringing of the child is in question the Court shall regard the welfare of the child as the first and paramount importance</li> <li>- s4 court may make an order regarding custody and access on the basis of what seems just. Where it appears to the Court that the parents of a child are unfit to have custody, the Court may appoint some other person to be its guardian as seems fit.</li> </ul> <p><i>Family Safety Act 2013</i></p> <ul style="list-style-type: none"> <li>- 10 (3) [...] where the court is satisfied that it is in the best interests of any child, it may- (a) refuse the respondent [i.e. alleged perpetrator of domestic violence] contact with such child; or (b) order contact with such child on such conditions as it may consider appropriate.</li> </ul>	<p>Although the welfare of the child is identified as the most important principle in determining issues of custody, this is compromised by the provision requiring that custody be awarded on the basis of what the Court considers just. Compliance with this indicator requires that the best interests of the child be the explicit basis on which decisions about alternative care are made.</p>
<p>2(17): The law requires that due regard must be paid to the desirability of</p>	<p><b>Partly</b></p>	<p><i>The Infants Ordinance 1961 –</i></p> <ul style="list-style-type: none"> <li>- s7A The Court shall not make an adoption order</li> </ul>	<p>In terms of adoption there is some provision to ensure placement of the child with a family of</p>

continuity in a child's upbringing and to the child's ethnic, religious, cultural and linguistic background.		for adoption of an infant by any person who is not a citizen unless the infant subject to the adoption does not have any family or suitable family or other suitable person in Samoa who is willing to provide for the care, support and welfare of the infant in Samoa.	its ethnic and cultural background, but this priority is not specified in legislation for other forms of alternative care.
2(18): The law requires that the child's views be taken into consideration in any decision made about alternative care, and that those views be given due weight in accordance with the child's age and maturity.	<b>No</b>	<i>The Infants Ordinance</i> 1961 – - s8 Adoption order for child over the age of 12 only permissible if the child consents to the adoption	Only one provision relating to the separation of the child from their parents takes into account the child's views.
2(19): The law requires that the views of all interested parties be heard and taken into consideration in any decision made in relation to the separation of a child from its parents and the allocation of alternative care.	<b>No</b>	Schedule 2 to <i>Infants (Adoption) Regulation of 2006</i> Clause C provides that the parents and relatives of the child to be adopted are aware of or have been advised of the request for adoption; whether they agree or disagree with the adoption; have been asked whether they are willing and able to provide for the care support and welfare of the infant and their responses; and if yes to their views and opinions of such persons to the proposed adoption.	No reference to this in legislation.
2(20): The law requires that all children in alternative care (foster care, adoption, institutions, etc.) are subject to a regular review of that placement.	<b>Partly</b>	<i>Mental Health Act 2007</i> – - s11 (2) A Community Treatment Order may be issued for a maximum of 12 months and, prior to the expiry and following a further assessment of the person, may be renewed for a further period or periods not exceeding 12 months. - s11(5) A Community Treatment Order shall be revoked where: (a) the person has been examined by such mental health care professional; and (b) the mental health care professional believes that the person no longer meets the criteria...	Placements made under the Mental Health Act 2007 are subject to regular review. No other review of placements is specified in legislation.

		<ul style="list-style-type: none"> <li>- s14 (2) An Inpatient Treatment Order may be issued for a maximum of 6 weeks and, prior to the expiry and, following a further examination of the person by a mental health care professional, may be renewed for a further period or periods not exceeding 6 weeks.</li> <li>- s14 (4) following an assessment, a mental health care professional may vary the duration, terms and conditions of the Inpatient Treatment Order.</li> <li>- s14(5) An Inpatient Treatment Order shall be revoked by any duly directed mental health care professional where: (a) the person has been examined by such mental health care professional; and (b) the mental health care professional believes that the person no longer meets the criteria...</li> <li>- s20(1) &amp; s21(1) A person subject to a Community or Inpatient Treatment Order, or any other person who satisfies the Court that they have a proper interest in the matter, may, with the leave of the Court, apply during the currency of the order to the Court to review the order.</li> </ul>	
2(21): The law gives children separated from their parents the right to maintain personal relations and direct contact with both parents on a regular basis, except if it is contrary to the child's best interests.	<b>No</b>	<i>Family Safety Act 2013</i> ] - <ul style="list-style-type: none"> <li>- 10(3) [...] where the court is satisfied that it is in the best interests of any child, it may- (a) refuse the respondent [i.e. alleged perpetrator of domestic violence] contact with such child; or (b) order contact with such child on such conditions as it may consider appropriate.</li> </ul>	Not specified in relevant legislation
2(22): Standards of care have been established for residential care facilities and other forms of alternative care (including fostering, guardianship, etc) and accreditation required.	<b>No</b>	<i>Infants Ordinance 1961</i> – <ul style="list-style-type: none"> <li>- s9A No person in Samoa or elsewhere shall act as or call themselves an adoption agency unless the person has the prior written authorization to do so from the Attorney-General.</li> </ul>	There are no specific standards of care. Legislation and Constitutional provisions in relation to institutions and services responsible for the care of children generally make no reference to accreditation.

		The same section also provides for the establishment of a Code of Conduct for Adoption Agencies which needs to be complied with before the Attorney General can give his or her authorisation under section 9A (1).	
2(23): The law requires that all adoptions be authorized only by a competent authority, and that:	<b>Yes</b>	<i>Births, Deaths and Marriages Registration Act 2002</i> – - s32 every adoption in Samoa must be registered  <i>The Infants Ordinance 1961</i> – - s7 Court has power to make an adoption order in respect of any infant under 21 years of age	
2(23) (a) The best interest of the child is the paramount consideration.	<b>Yes</b>	<i>The Infants Ordinance 1961</i> – - s8 Before making such order of adoption the Court shall be satisfied: ... (b) that the welfare and interests of the infant will be promoted by the adoption	
2(23) (b) The consent of the child is required, or the views of the child sought, considered and given due weight, having regard to the child's age and capacity.	<b>Partly</b>	<i>The Infants Ordinance 1961</i> – - s8 Before making an order of adoption the Court shall be satisfied... that the infant if over the age of 12 years consents to the adoption	There is no provision requiring the authorities to seek and given due weight to the views of children under the age of 12.
2(23) (c) Authorities must be satisfied that the adoption is permissible in view of the child's status and that all consents required by law have been given.	<b>Yes</b>	<i>The Infants Ordinance 1961</i> – - s8 Before making an order of adoption the Court must be satisfied.... (c) that the infant if over the age of 12 years consents to the adoption; (d) that the parents, if living, or legal guardian (if any) consent to the order of adoption. The Court may dispense with consent where the person is permanently absent from Samoa, or is incapable of giving consent, or is unfit to have custody and control of the infant or has deserted the infant.	

2(23) (d) Where consent is required, the law requires that counselling be provided.	<b>No</b>		
2(23) (e) Due regard must be paid to preservation of the child's identity and the desirability of continuity in the child's background and to the child's ethnic, religious, cultural and linguistic background	<b>Yes</b>	<i>The Infants Ordinance 1961 –</i> - s7A The Court shall not make an adoption order for adoption of an infant by any person who is not a citizen unless the infant subject to the adoption does not have any family or suitable family or other suitable person in Samoa who is willing to provide for the care, support and welfare of the infant in Samoa.	
2(23) (f) Inter-country adoption is permitted only as a last resort for suitable alternative care.	<b>Yes</b>	<i>The Infants Ordinance 1961 –</i> - s7A The Court shall not make an adoption order involving overseas adoption unless the infant subject to the adoption does not have any family or suitable family or other suitable person in Samoa who is willing to provide for the care, support and welfare of the infant in Samoa.	This is the most recent amendment ...s7A (Infants (Adoption) Ordinance Amendment Act 2005
2(23) (g) Legal safeguards for international adoption of equivalent or greater stringency to those in place for domestic adoption	<b>Yes</b>	<i>Births, Deaths and Marriages Registration Act 2002 –</i> - s35 The Registrar may direct that the provisions of this Act that apply in relation to the registration of domestic adoptions apply to overseas adoptions	Adoption provisions in the Infants Ordinance are not specified to apply only to domestic adoption and therefore apply to approval of all adoptions. Adoption provisions in relation to registration of adoptions specified to apply equally to both domestic and international adoption.
2(23) (h) Improper financial gain from inter-country adoption is prohibited by law and appropriately sanctioned.	<b>Yes</b>	<i>The Infants Ordinance 1961 –</i> - s9 Except with the consent of the Court, it shall not be lawful for any person to give or receive or agree to give or receive any payment or reward in consideration of the making of arrangements for an adoption or proposed adoption	Exception reasonable.
2(24): Border controls are in place for monitoring the entry and exit of babies	<b>No</b>		

and children travelling with adults who are not their parents.			
2(25): Laws and procedures governing deportation require consideration of the child's right not to be separated from his or her parents unless necessary for his or her best interests.	<b>No</b>		Not specified in relevant legislation
2(26): The law provides for babies and young children to be able to reside with incarcerated mothers.	<b>Yes</b>	<p><i>Prisons Regulations 1954</i></p> <p>- The child of a female prisoner may be received into prison with its mother, provided it is being nursed at the breasts or is in the opinion of the committing Judge ... too young to be separated from its mother. In all such cases an authority from the committing Judge ... for the child's admission shall accompany the prisoner on reception.</p>	
2(27): Prisoners are permitted by law to be visited by their children.			<p><i>Prisons and Corrections Bill 2011</i></p> <p>Section 42(1)(e) provides for impermissible penalties. No prisoner shall be subjected by way of punishment to a total denial of visitation rights or the right to communicate with friends, family, medical practitioner or the prisoner's chaplain or religious representative. But 42(2) provides that such rights or the right to communicate with friends, family, medical practitioner or the prisoner's chaplain or religious representative can be withdrawn for a period by way of Regulation or Commissioners OPrders but only for a period.</p>

			Section 60 (1)(p) explains that arrangements for female prisoners and their children consistent with the rights and obligations of CEDAW and CRC, and in particular the rights of mothers to feed and care for their infant children whilst in prison will be addressed in the relevant <i>Prisons and Corrections Bill 2011</i> . Relevant Regulations are being drafted.
2(28): The law provides for the child's right to knowledge of whereabouts of parents where separation results from action by the State.	<b>No</b>		Not specified in relevant legislation
2(29): Legislative provision for an independent, child-friendly avenue of complaint for consideration and resolution of complaints by children regarding state actions to separate them from their parents and related issues (e.g. alternative care).	<b>Partly</b>	<i>The Komesina o Sulufaiga (Ombudsman) Act 1988</i> – - Provides for an Ombudsman's office to investigate any complaints by individuals in relation to treatment by listed public institutions. - s13 All complaints must be made in writing. - Check the work on National Human Rights Commission and the extent of its mandate to hear and determine complaints from children or complaints affecting the rights of children.	Investigation limited to specified public institutions, the service is not specified to cater for children. Nor is it set up in a child accessible way – for example, complaints must be in writing. There is a risk that children's complaints in a non-child-specific service could be dismissed as frivolous.
2(30): Traditional customs which separate parents and children unnecessarily are outlawed.	<b>No</b>		

<b>3</b>	<b>Violence and maltreatment</b>		
	<b>CRC Articles: 1, 2, 3, 4, 6, 12 and 19</b>		
<b>Child protection indicator</b>	<b>Compliance</b>	<b>Relevant legislation</b>	<b>Comments</b>
3(1): All forms of violence against children	<b>Partly</b>	<i>Education Act 2009</i> -	It is hoped that reform of the Crimes

<p>(physical, sexual, emotional, neglect) are clearly defined and strictly prohibited in law.</p>	<p>- 23(1) Every school and early childhood education centre must have a discipline policy. (2) A discipline policy must not include or permit the use of: (a) corporal punishment; (b) any form of punishment that may cause harm to the recipient; or (c) any form of punishment that humiliates or is intended to humiliate the recipient.</p> <p><i>Crimes Ordinance 1961 –</i></p> <p>- s77 Duty of parent/legal guardian to provide the necessities of life for any child under 16. Neglect leading to harm or death punishable by imprisonment up to 7 years.</p> <p><i>The Infants Ordinance 1961 –</i></p> <p>- s12 Any person having the custody or control of any child under the age or apparent age of 14 years who in a manner likely to cause such child unnecessary suffering or injury to its health wilfully ill-treats, neglects, abandons, or exposes such child or cause or procures such child to be ill-treated, neglected, abandoned, or exposed commits an offence and is liable to a fine or imprisonment up to one year. [Family Safety Act 2011 [DRAFT] s26(1) proposes increasing the age limit here to 18 years]</p> <p><i>Divorce and Matrimonial Causes Amendment Act 2010 –</i></p> <p>- s12. Section 26A on ‘Restraining Orders’ added to the Divorce and Matrimonial Causes Ordinance 1961 defines ‘domestic violence’ as : ““domestic violence” means conduct that: (a) causes physical, psychological or personal injury to a relevant person;</p>	<p>Ordinance 1961 will result in greater clarity regarding definitions and prohibition of all forms of violence as this is currently unclear. Detailed guidance can be found in the UN Committee on the Rights of the Child ‘General Comment No.13 (2011) – Article 19: The right of the children to freedom from all forms of violence S16-30.</p> <p>It is not clear how the Education Act prohibition on corporal punishment can be reconciled with s14 of the <i>The Infants Ordinance 1961</i> which states: (with reference to punishment for ill-treatment and neglect of children) “Nothing in this Part of this Ordinance shall be construed to take away or affect the right of any parent, teacher, or other person having the lawful control or charge of a child to administer reasonable punishment to such child”. This provision was not amended or repealed by the Education Act 2009.</p> <p>Crimes Ordinance S77: Full compliance with the Convention requires that such protection be afforded to any child up to the age of 18.</p>
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3(2): The law requires the reporting and investigation of all child deaths.	<b>No</b>		It should be noted, however, that the SLRC is recommending (in relation to reform of Coroners’ regulations) that <i>any</i> death of a child, regardless of circumstances, <i>must</i> go to a coronial hearing. The SLRC is recommending that this be made mandatory. This would result in compliance with this indicator.
3(3): Corporal punishment is explicitly prohibited in the home, school, institutions and community. Legal exceptions or defences are not available in law to parents or others in relation to assaults on children	<b>Partly</b>	<p><i>Education Act 2009</i> –</p> <p>- s23(1) Every school and early childhood education centre must have a discipline policy. (2) A discipline policy must not include or permit the use of: (a) corporal punishment; (b) any form of punishment that</p>	Corporal punishment has been explicitly banned in schools and early childhood education settings, but not in other settings such as the family. Although under general criminal provisions the child is potentially

<p>(e.g. the defence of “parental correction”).</p>		<p>may cause harm to the recipient; or (c) any form of punishment that humiliates or is intended to humiliate the recipient. (3) A teacher or staff member of a school must not administer corporal punishment to a school student at a school or during any activity organised by a school. (4) A person employed at an early childhood education centre must not administer corporal punishment to any child at the early childhood education centre or during any activity organised by the early childhood education centre.</p> <ul style="list-style-type: none"> <li>- s31(b) Adherence to section 23 is a criteria for private and mission schools to be registered;</li> <li>- s37 Village schools are subject to the same registration criteria;</li> <li>- s56 Ministry and village schools must develop a discipline policy subject to s23.</li> </ul> <p><i>Crimes Ordinance 1961 -</i></p> <ul style="list-style-type: none"> <li>- s78 Common assault, including the threat of assault liable to imprisonment up to one year</li> <li>- s79 – 82 various degrees of physical assault.</li> </ul> <p><i>The Infants Ordinance 1961 –</i></p> <ul style="list-style-type: none"> <li>- s14 (with reference to punishment for ill-treatment and neglect of children) Nothing in this Part of this Ordinance shall be construed to take away or affect the right of any parent, teacher, or other person having the lawful control or charge of a child to administer reasonable punishment to such child.</li> </ul>	<p>protected from violent physical punishment, specific provisions are necessary for compliance with this indicator in other settings. In addition, the <i>Infants Ordinance</i> specifically acknowledges the right of adults to punish children without defining what amounts to reasonable punishment. It is not clear how this impacts on the prohibition of corporal punishment in the Education Act.</p>
<p>3(4): The threat of and use of mental violence in homes, schools (public/private), child care institutions (public/private), foster care, alternative care, day care and the penal system is an offence</p>	<p><b>Partly</b></p>	<p><i>Education Act 2009 -</i></p> <ul style="list-style-type: none"> <li>- s23(1) Every school and early childhood education centre must have a discipline policy. (2) A discipline policy must not include or permit the use of: (b) any form of punishment that may cause harm to the</li> </ul>	<p>Apart from the Education Act which applies to schools and early childhood education settings, there is no explicit prohibition on the use of mental violence against children. In addition, the <i>Infants Ordinance</i> specifically</p>

		<p>recipient; or (c) any form of punishment that humiliates or is intended to humiliate the recipient.</p> <ul style="list-style-type: none"> <li>- s31(b) Adherence to section 23 is a criteria for private and mission schools to be registered;</li> <li>- s37 Village schools are subject to the same registration criteria;</li> <li>- s56 Ministry and village schools must develop a discipline policy subject to s23.</li> </ul> <p><i>The Constitution of the Independent State of Western Samoa Act 1960 –</i></p> <ul style="list-style-type: none"> <li>- s7 No person shall be subjected to torture or to inhuman or degrading treatment or punishment</li> </ul> <p><i>The Infants Ordinance 1961 –</i></p> <ul style="list-style-type: none"> <li>- s14 (with reference to punishment for ill-treatment and neglect of children) Nothing in this Part of this Ordinance shall be construed to take away or affect the right of any parent, teacher, or other person having the lawful control or charge of a child to administer reasonable punishment to such child</li> </ul>	<p>acknowledges the right of adults to punish children without defining what amounts to reasonable punishment.</p>
<p>3(5): The law prohibits all expressions of violence in schools, whether by pupils or teachers, including physical violence, emotional violence (bullying), sexual harassment, stigma and discrimination.</p>	<p><b>Partly</b></p>	<p><i>Education Act 2009 –</i></p> <ul style="list-style-type: none"> <li>- s22. The principal and management authority of every school and the director and management authority of every early childhood education centre shall foster: (a) a caring, productive and safe environment for learning; (c) mutual respect among all individuals at the school or early childhood education centre.</li> <li>- s23. (1) Every school and early childhood education centre must have a discipline policy. (2) A discipline policy must not include or permit the use of: (a) corporal punishment; (b) any form of punishment that may cause harm to the recipient; or (c) any form of</li> </ul>	<p>For full compliance, the provisions could be more explicit on peer violence, bullying, sexual harassment and discrimination.</p>

		<p>punishment that humiliates or is intended to humiliate the recipient. (3) A teacher or staff member of a school must not administer corporal punishment to a school student at a school or during any activity organised by a school. (4) A person employed at an early childhood education centre must not administer corporal punishment to any child at the early childhood education centre or during any activity organised by the early childhood education centre.</p> <ul style="list-style-type: none"> <li>- s31(b) Adherence to section 23 is a criteria for private and mission schools to be registered;</li> <li>- s37 Village schools are subject to the same registration criteria;</li> <li>- s56 Ministry and village schools must develop a discipline policy subject to s23.</li> <li>- s25(1) It is an offence for any person to: (b) insult or abuse any student or teacher in the presence or hearing of the children who are on the school premises or who are participating in an activity organised by a school; (2) It is an offence for any person to: (b) to insult or abuse any child or person employed in an early childhood education centre in the presence or hearing of children who are on the early childhood education centre's premises or who are participating in any activity organised by the early childhood education centre. (3) Any person who commits an offence under this section shall be liable to a fine not exceeding 50 penalty units.</li> </ul>	
<p>3(6): National policies, strategies and laws exist to counter spousal violence and its impact on children including (but not restricted to):</p>	<p><b>No</b></p>		<p>The Family Safety Act 2013 will address this to some extent.</p>

<p>3(6)(a) Criminal assault against women in the home a specific offence</p>	<p><b>No</b></p>	<p><i>Family Safety Act 2013</i></p> <ul style="list-style-type: none"> <li>- s17(1) Where an offence took place within the context of a domestic relationship, the Court shall consider that fact as an aggravating factor against the offender when considering sentence.</li> <li>- s11(1) Any respondent who breaches a protection order issued under the provisions of this Act shall: <ul style="list-style-type: none"> <li>(a) where the breach involves the further physical or sexual abuse of the complainant, be imprisoned for a term not exceeding 6 months; (b) where the breach involves any other act of violence not mentioned in paragraph (a), such person shall be subject to such punishment as the Court deems appropriate including sanctions available under the Community Justice Act 2008.</li> </ul> </li> <li>- s11(6) Nothing in this section shall be construed to: <ul style="list-style-type: none"> <li>(a) prohibit the further laying of any relevant criminal charges against the respondent for the action or omission giving rise to the breach of a protection order; or (b) override a sanction imposed against the respondent by the Court which is higher than that provided for under subsection (1) following a trial arising from the action or omission giving rise to the breach of a protection order.</li> </ul> </li> </ul>	<p>The Crimes Ordinance 1961 does not provide for domestic violence to be a specific criminal offence and nor does the draft Family Safety Act 2011, although the latter allows the Court to consider as an aggravating factor against the offender the fact that an offence took place within the context of a domestic relationship.</p>
<p>3(6) (b): Domestic violence legislative provisions provide for the removal of the perpetrator from the home by police following acts or threats of violence</p>	<p><b>Partly</b></p>	<p><i>Divorce and Matrimonial Causes Amendment Act 2010</i></p> <p>–</p> <ul style="list-style-type: none"> <li>- s12. Section on ‘Restraining Orders’ added to the Divorce and Matrimonial Causes Ordinance 1961, comprising new sections 26A-26E</li> </ul> <p><i>Family Safety Act 2013</i></p> <ul style="list-style-type: none"> <li>- 9(1) The Court may, in issuing a protection order prohibit the respondent from: (b) entering a residence, or part of such residence, shared by the</li> </ul>	<p>Restraining orders are available in the context of divorce proceedings. It is not clear whether they apply outside of the context of a divorce case. No other legislative provisions currently provide for the removal of the perpetrator from the home. If passed, the Family Safety Act 2011 will allow for the issuing of protection orders which may prohibit the alleged perpetrator from entering the home.</p>

		complainant and the respondent;	
3(6) (c): A system of apprehended violence orders	<b>Partly</b>	<p><i>Divorce and Matrimonial Causes Amendment Act 2010</i></p> <p>–</p> <ul style="list-style-type: none"> <li>- s12. Section on ‘Restraining Orders’ added to the Divorce and Matrimonial Causes Ordinance 1961, comprising new sections 26A-26E</li> </ul> <p><i>Family Safety Act 2013</i></p> <ul style="list-style-type: none"> <li>- Part II outlines provisions regarding ‘Protection Orders’ which, according to section 4(5) can be applied for directly by children if necessary.</li> <li>- s4(5) Despite the provisions of any other law, any child, or any person on behalf of a child, may apply to the Court for a protection order without the assistance of a parent, legal guardian or any other person.</li> <li>- s21(1) To avoid duplication, if a restraining order is issued under the Divorce and Matrimonial Causes Ordinance 1961, that restraining order is taken as a protection order issued under this Act.</li> </ul>	<p>In relation to divorce, restraining orders are available in cases of domestic violence lasting from 7 days (if issued by a Registrar) or up to 2 years with the possibility of extension beyond this (if issued by a Court). Protection of children is a primary consideration in decision making (26B(2)). Under section 26E(1)(b) the Attorney General has the power to intervene in any order relating to the welfare of a child. However, it is not clear whether these restraining orders apply outside of the context of a divorce case.</p> <p>, The Family Safety Act 2013 will allow for the issuing of protection orders more broadly.</p>
3(6) (d): Definition of mental violence includes witnessing acts of violence	<b>No</b>	<p><i>Divorce and Matrimonial Causes Amendment Act 2010</i></p> <p>–</p> <ul style="list-style-type: none"> <li>- s12. Section 26A on ‘Restraining Orders’ added to the Principal Act defines ‘domestic violence’ as: ““domestic violence” means conduct that: (a) causes physical, psychological or personal injury to a relevant person; or (b) causes damage to the property of a relevant person; or (c) is a threat, made to a relevant person, to do anything in relation to the relevant person or another relevant person that, if done, would fall under paragraph (a), or (b); or (d) is harassing or offensive to a relevant person. “Relevant person” means a spouse or child of a person and</li> </ul>	<p>Although witnessing acts of violence is not explicitly included in the definition of ‘domestic violence’ in the Family Safety Act 2013, the presence of a child during an act of violence can be taken into account during sentencing.</p>

		<p>includes a step child of that person.”  [However, <i>Family Safety Act 2013</i> section 26(2) proposes that this definition conform to that in the Family Safety Act 2011 itself].</p> <p><i>Family Safety Act 2013</i></p> <ul style="list-style-type: none"> <li>- s2 “domestic violence” means (a) physical abuse; (b) sexual abuse; (c) emotional, verbal and psychological abuse; (d) intimidation; (e) harassment; (f) stalking; (g) any other controlling or abusive behaviour towards a complainant where such conduct harms, or may cause imminent harm to, the safety, health or wellbeing of the complainant;</li> <li>- s17(2) In sentencing offenders for an offence involving domestic violence, a court must also have regard to – (a) (i) the age of the complainant or victim; (b) whether a child was present when the offence was committed, or was otherwise affected by it</li> </ul>	
<p>3(7): Traditional practices harmful to children, such as early marriage, female genital mutilation, honour killings etc., have been identified and prohibited by law and appropriate penalties prescribed for those who violate these provisions</p>	<p><b>No</b></p>	<p><i>The Marriage Ordinance 1961 –</i></p> <ul style="list-style-type: none"> <li>- s9 A marriage officer shall not solemnise or record any marriage unless the husband is at least 18 years of age and the wife is at least 16 years of age, but no marriage shall be invalidated by a breach of the provisions of this section</li> <li>- s13 No marriage shall be deemed void on account of any infringement of the provisions of this Ordinance</li> <li>- s30 Every Marriage Officer who knowingly and wilfully solemnises any marriage contrary to the provisions of this Ordinance ... commits an offence and shall be liable on conviction to imprisonment for a term not exceeding 5 years, or to a fine not exceeding \$600.</li> </ul>	<p>Child marriage for the boy child is an offence, but the girl child over 16 years of age can legally marry. In addition, the marriage of children below the minimum age will not make the marriage void.</p> <p>No other forms of harmful traditional practices have been identified in law.</p>

<p>3(8): Negligent treatment of a child by any person who has care of that child an offence, a defence to which is poverty.</p>	<p><b>Partial</b></p>	<p><i>Crimes Ordinance 1961 –</i>  - s77 Duty of parent/legal guardian to provide the necessities of life for any child under 16. Neglect leading to harm or death punishable by imprisonment up to 7 years.</p> <p><i>The Infants Ordinance 1961 –</i>  - s12 Any person having the custody or control of any child under the age or apparent age of 14 years who in a manner likely to cause such child unnecessary suffering or injury to its health wilfully ill-treats, neglects, abandons, or exposes such child or cause or procures such child to be ill-treated, neglected, abandoned, or exposed commits an offence and is liable to a fine or imprisonment up to one year.  [Family Safety Act 2013s26(1) proposes increasing the age limit here to 18 years]</p>	<p>Full compliance with the Convention requires that such protection be afforded to any child up to the age of 18.</p>
<p>3(9): Infanticide is a criminal act</p>	<p><b>Yes</b></p>	<p><i>Crimes Ordinance 1961 –</i>  - s72 Infanticide an alternative charge to murder/manslaughter carrying a penalty of up to 3 years imprisonment.</p>	<p>Crimes Bill 2009  Section 104 provides for Infanticide Infanticide an alternative charge to murder/manslaughter carrying a penalty of up to 5 years imprisonment</p>
<p>3(10): Provisions protecting children from violence are free from discrimination</p>	<p><b>No????</b></p>	<p><i>The Constitution of the Independent State of Western Samoa</i>  - Article15(4) Nothing in the constitutional anti discrimination provisions will affect the operation of any existing law or the maintenance by the State of any executive or administrative practice being observed on Independence Day</p> <p>The Constitution provides for Fundamental Rights e.g. Article 5. Right to life; Article 6. Right to personal liberty; Article 7. Freedom from inhuman treatment; Article 8. Freedom from forced labour Article 9. Right to a fair</p>	<p>Explicitly condones any discriminatory provisions existing in legislation or the practice of the executive or administration at independence.  Female child sexual abuse and male child sexual abuse are completely separate crimes under legislation. Different sentences apply according to the sex of the victim, with no protection for the boy child at all in some circumstances. This is addressed in the SLRC's recommendations in relation to reform of the Crimes Ordinance 1961, i.e. that the</p>

		<p>trial; Article 10. Rights concerning criminal law; Article 11. Freedom of religion; 12. Rights concerning religious instruction; Article 13. Rights regarding freedom of speech, assembly, association, movement and residence; 14. Rights regarding property; whilst not child specific but they can be used to protect the rights of both male and female child.</p> <p><i>Labvour and Employment Act 1972</i> s. 32 provides for working conditions, safety and health with regards to the Employment of children - It is unlawful to employ children under the age of 15 years in any place of employment except in safe and light work suited to his or her capacity, and subject to such conditions as may be imposed by the Commissioner. No such child shall be employed on dangerous machinery or in any occupation or in any place under working conditions injurious or likely to be injurious to the physical or moral health of such child. Furthermore, no such child shall be employed as a worker upon any vessel unless such vessel is under the personal charge of the parent or guardian of the child.</p> <p><i>Education Act 2009</i> Sections 20 and 21 provides guidelines on the employment compulsory of school aged children.</p>	<p>Crimes Ordinance 1961 be written in gender-neutral language and that the definition of some forms of violence be expanded to include both sexes and a more inclusive age range. (This has been addressed under the Crimes Bill 2009 please refer to notes on this in this matrix)</p>
<p>3(11): Independent child-friendly complaints avenue outside of the criminal legal system available to child victims/survivors of violence</p>	<p><b>Partly</b></p>	<p><i>The Komesina o Sulufaiga (Ombudsman) Act 1988</i> –</p> <ul style="list-style-type: none"> <li>- Provides for an Ombudsman’s office to investigate any complaints by individuals in relation to treatment by listed public institutions.</li> <li>- s13 All complaints must be made in writing.</li> </ul>	<p>Investigation limited to specified public institutions, the service is not specified to cater for children. Nor is it set up in a child accessible way – for example, complaints must be in writing. There is a risk that children’s complaints in a non-child specific</p>

			service could be dismissed as frivolous.
3(12): Institutions dealing with reports of violence against children are required to record and report disaggregated data in relation to reports received and actions taken.	<b>No</b>		

4 Sexual abuse and sexual exploitation CRC Articles: 1, 2, 3, 4, 6, 12, 19 and 34			
Child protection indicator	Compliance	Relevant legislation	Comments
4(1): The law defines unlawful sexual activity involving children.	<b>No</b>		(This has been addressed under the Crimes Bill 2009 please refer to notes on this in this matrix)
4(2): The criminal law penalizes all forms of unlawful sexual acts against children as separate and more serious crimes than similar conduct against adults.	<b>Partly</b>	<b>Crimes Ordinance 1961 -</b> <ul style="list-style-type: none"> <li>- s49(3) Everyone of or over the age of 16 years who commits incest is liable to imprisonment for a term not exceeding 7 years.</li> <li>- s50(1) Everyone is liable to imprisonment for a term not exceeding 7 years who has or attempts to have sexual intercourse with any girl, not being his wife, who is under the age of 21 years and who, being his stepdaughter, foster daughter or ward, is at the time of the intercourse or attempted intercourse living with him as a member of his family.</li> <li>- s51(1) Everyone who has sexual intercourse with any girl under the age of 12 years is liable to imprisonment for a term not exceeding 10 years. (2) Everyone who attempts to have sexual intercourse with any girl under the age of 12 years is liable to</li> </ul>	<p>Female child sexual abuse and male child sexual abuse are completely separate crimes under legislation. Different sentences apply according to the sex of the victim, with no protection for the boy child at all in some circumstances. This is addressed in the SLRC's recommendations in relation to reform of the Crimes Ordinance 1961.</p> <p>There are also instances where penalties for sexual offences against children are less severe than offences against adults. For example, the penalty for 'sexual intercourse with girl under 12' is a maximum of 10 years imprisonment, compared to life imprisonment for rape, even though such a girl is under the</p>

	<p>imprisonment for a term not exceeding 7 years.</p> <ul style="list-style-type: none"> <li>- s52(1) Everyone is liable to imprisonment for a term not exceeding 7 years who: (a) Indecently assaults any girl under the age of 12 years; or</li> <li>- (b) Being a male, does any indecent act with or upon any girl under the age of 12 years; or (c) Being a male, induces or permits any girl under the age of 12 years to do any indecent act with or upon him.</li> <li>- s53.(1) Everyone is liable to imprisonment for a term not exceeding 7 years who has or attempts to have sexual intercourse with any girl of or over the age of 12 years and under the age of 16 years, not being his wife. (2) Everyone is liable to imprisonment for a term not exceeding 7 years who: (a) Indecently assaults any such girl; or (b) Being a male, does any indecent act with or upon any such girl; or (c) Being a male, induces or permits any such girl to do any indecent act with or upon him.</li> <li>- s54 Everyone is liable to imprisonment for a term not exceeding 5 years who: (a) Indecently assaults any woman or girl of or over the age of 16 years; or (b) Does anything to any woman or girl of or over the age of 16 years, with her consent, which but for such consent would have been an indecent assault such consent being obtained by a false and fraudulent representation as to the nature and quality of the act.</li> <li>- s58B(1) Every woman of or over the age of 21 years is liable to imprisonment for a term not exceeding 5 years who: (a) Does any indecent act with or upon any girl under the age of 16 years; or (b) Induces or permits any girl under the age of 16 years to do any indecent act with or upon her.</li> <li>- s58C(1) Everyone is liable to imprisonment for a term not exceeding 7 years who, being a male: (a)</li> </ul>	<p>age of sexual consent.</p> <p>In general children aged 16-18 are not protected by provisions relating to child-specific sexual offences.</p> <p>In the Crimes Bill 2011 there are specific provisions for all forms of unlawful sexual acts against children. Section 58 criminalises sexual conduct with child under 12. A person who has sexual connection with a child under 12 years is liable to imprisonment for life. A person who attempts to have a sexual connection with a child under 12 years is liable to imprisonment for 14 years. A person who does an indecent act on a child under 12 years is liable to imprisonment for a term not exceeding 10 years.</p> <p>Section 59 criminalises sexual conduct with a young person under 16 years. A person who has sexual connection with a young person is liable to imprisonment for a term not exceeding 10 years. A person who attempts to have sexual connection with a young person is liable to imprisonment for a term not exceeding 10 years. A person who does an indecent act on a young person is liable to imprisonment for a term not exceeding seven years. No person can be convicted under section 59 if he or she is married to the young person concerned at the time of sexual connection or indecent act.</p> <p>(Note: this might have some inconsistency with</p>
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		Indecently assaults any boy under the age of 16 years; or (b) Does any indecent act with or upon any boy under the age of 16 years; or (c) Induces or permits any boy under the age of 16 years to do any indecent act with or upon him. <b>(2)</b> No person under the age of 21 years shall be charged with committing or being a party to an offence against this section.	Marriage Ordinance 1961 s. 9)
4(3): The criminal law establishes an age below which a child is deemed to be unable to consent to sexual activities which is the same for boys and girls.	<b>Partly</b>	<p><i>Crimes Ordinance 1961 -</i></p> <ul style="list-style-type: none"> <li>- s51(3) Girl under 12 cannot consent to sexual intercourse with a man</li> <li>- s52(2) Girl under 12 cannot consent to acts of indecency with a man</li> <li>- s53 Girl under 16 cannot consent to sexual intercourse or acts of indecency with male perpetrator over 21</li> <li>- s58B(3) Girl under 16 cannot consent to acts of indecency with a woman</li> <li>- s58C(3) Boy under 16 cannot consent to acts of indecency with male over 21.</li> <li>- s58D Boy under 16 can be charged for acts of indecency with another male under 21 (note: children under the age of 8 cannot be charged with any crime)</li> </ul>	<p>The age of sexual consent is different for boys and girls. Minimum age for sexual activity set at 12 years for girls. It is set at 16 years for consent to some interactions – woman/girl, man over 21 and boy, man over 21 and girl. However, there is no minimum age below which a male child is deemed to be unable to consent to sexual activities with another male under 21.</p> <p>Crimes Act 2013 Consent is generally not a defence to sexual crimes under the Crimes Act 2013. It is a defence to a charge under section 59 (Sexual Conduct with a person under the age of 16) unless the person charged proves on the balance of probabilities that he or she was under the age of 21 years at the time of the commission of the act; and before the time of the act concerned, he or she had taken reasonable steps to find out whether the young person concerned was of or over the age of 16 years; and at the time of the act concerned, he or she believed on reasonable grounds that the young person was of or over the age of 16 years; and the young person consented.</p>

<p>4(4): No defence of honest and reasonable belief the victim/survivor was of legal age.</p>	<p><b>Partly</b></p>	<p><i>Crimes Ordinance 1961</i></p> <ul style="list-style-type: none"> <li>- s51 and 52: No defence that believed victim was over 12</li> <li>- s53: No defence that believed victim was over 16 unless person charged is under 21</li> </ul>	<p>Although the provisions provide some protection for the female child, it is inadequate in light of the fact that s53 removes the onus from the perpetrator to verify the age of the victim.</p> <p>There is no provision for a defence of honest and reasonable belief of the boy's age in relation to acts of indecency with boys under s58C.</p> <p>(This has been addressed under the Crimes Act 2013 please refer to notes on this in this matrix) Refer to sections 58 and 61.</p> <p>Reasonable belief that victim/survivor was of legal age is not a defence to a charge under section 58 (Sexual conduct with a child under 12 years old).</p> <p>Under sections 59 and 61 ((Sexual conduct with a child under 16 years old) It is a defence if the person charged can prove on the balance of probabilities that he or she is under the age of 21 years; before the act the person charged had taken reasonable steps to find out whether the young person was over the age of 16 years; at the time of the act the person charged believed that the young person was of and over the age of 16 years; and that the young person consented.</p>

<p>4(5): Minimum legal age for marriage ideally set at 18, with a strict minimum of 15 and is the same for boys and girls.</p>	<p><b>Partly</b></p>	<p><i>The Marriage Ordinance 1961 –</i></p> <ul style="list-style-type: none"> <li>- s9 A marriage officer shall not solemnise or record any marriage unless the husband is at least 18 years of age and the wife is at least 16 years of age, but no marriage shall be invalidated by a breach of the provisions of this section</li> <li>- s13 No marriage shall be deemed void on account of any infringement of the provisions of this Ordinance</li> <li>- s30 Every Marriage Officer who knowingly and wilfully solemnises any marriage contrary to the provisions of this Ordinance ... commits an offence and shall be liable on conviction to imprisonment for a term not exceeding 5 years, or to a fine not exceeding \$600.</li> </ul>	<p>Child marriage for the boy child is an offence, but the girl child over 16 years of age can legally marry. In addition, the marriage of children below the minimum age will not make the marriage void.</p>
<p>4(6): No exemption from rape prosecution for marital rape.</p>	<p><b>No</b></p>	<p><i>Crimes Ordinance 1961 –</i></p> <ul style="list-style-type: none"> <li>- s46(3) ... no man shall be convicted of rape in respect of his intercourse with his wife, unless at the time of the intercourse there was in for in respect of the marriage a decree of judicial separation or a separation order.</li> </ul>	<p>Explicit condoning of marital rape in legislation. The SLRC is recommending that this be repealed as part of the review of the Crimes Ordinance 1961.</p> <p>Crimes Act 2013 Section 49(4) provides that a person may be convicted of sexual violation in respect of sexual connection with another person notwithstanding that those persons were married to each other at the time of that sexual connection.</p> <p>Sexual violation is defined under 49(1) as the act of a male who rapes a female; or the act of a person having unlawful sexual connection with another person.</p> <p>Sexual connection is defined under section 50 as meaning connection occasioned by the</p>

			<p>penetration of the genitalia or the anus of any person by any part of the body of any other person; or any object held or manipulated by any other person,</p> <p>Sexual connection also means a connection between the mouth or tongue of any person and any part of the genitalia or anus of any other person.</p> <p>Sexual connection also means the continuation of sexual connection as described above. (Connection occasioned by the penetration of the genitalia or the anus of any person by any part of the body of any other person; or any object held or manipulated by any other person)</p>
<p>4(7): Definition of rape includes penetration of any part of the body by any body part/object and is not gender specific. The definition of non-consent is broad.</p>	<p><b>No</b></p>	<p><i>Crimes Ordinance 1961</i> –</p> <p>- s47(1) Rape is the act of a male person having sexual intercourse [defined as ‘complete upon penetration ’] with a woman or girl: (a) Without her consent freely and voluntary given; or (b) With consent extorted by fear or bodily harm or by threats; or (c) With consent extorted by fear, on reasonable grounds, that the refusal of consent would result in the death of or grievous bodily injury to a third person; or (d) With consent obtained by personating her husband; or (e) With consent obtained by a false and fraudulent representation as to the nature and quality of the act.</p>	<p>The current definition of rape applies only to women and girls and does not include any part of the body or any object.</p> <p>The SLRC is recommending: “A definition of rape should be included in the <i>Crimes Ordinance</i> which specifies that the offence covers all forms of sexual penetration including the introduction into a male or female’s genitalia of another part of a person’s body or an object held or manipulated by another person.” This would address some aspects, but still excludes ‘any part of the body’ such as the mouth.</p>

			<p><i>Crimes Act 2013</i> This is addressed under <i>section 49</i> and <i>section 50</i> of the <i>Bill</i> which addresses sexual violation and sexual connection.</p>
4(8): Special protections in place for vulnerable children, such as disabled children.	<b>Partly</b>	<p><i>Crimes Ordinance 1961</i>- - s57 Prohibits sexual intercourse with idiot or imbecile girl.</p> <p><i>Mental Health Act 2007</i> - - s3. [...] objectives and principles: (a) to ensure that persons with a mental disorder receive the best possible care, support and, where required, treatment and protection; (c) to minimise the restrictions upon the liberty of persons with a mental disorder and interference in their rights, dignity and self-respect, so far as is consistent with their proper care, support, treatment and protection and the protection of other persons; (i) to eliminate discrimination against, and abuse, mistreatment and neglect of persons with a mental disorder;</p>	<p>No special protections for male children with intellectual disability.</p> <p>The Mental Health Act 2007 highlights the importance of protection of people with mental disorders in general (although this is not child-specific and not specific to sexual abuse or exploitation). However, there is no specific legislation mentioning special protection of children with physical disabilities.</p> <p>Crimes Act 2013 (when bills, sections are clauses) Section 63 (1) of the Bill penalises a person who has or attempts to have a sexual connection with a person who is severely intellectually disabled to imprisonment for a term not exceeding 7 years.</p> <p>Section 63(2) penalises a person who indecently assaults or attempts to indecently assault a person who is severely intellectually disabled to imprisonment for a term not exceeding 7 years.</p>
4(9): Sexual harassment explicitly prohibited between children and between children and adults in all institutional contexts	<b>No</b>		<p>Crimes Act 2013 Sections 55 deals with incest. A sexual</p>

			<p>connection is incest if it is between 2 people whose relationship is that of parent and child, siblings, half-siblings, or grandparent and grandchild; and the person charged knows of the relationship. A person who is over the age of 16 years who commits incest is liable to imprisonment for a term not exceeding 7 years.</p> <p>Section 56 provides for sexual conduct with a family member. A person who has sexual connection with a dependent family member under the age of 21 years is liable to imprisonment for a term not exceeding 7 years. A person who attempts to have sexual connection with a dependent family member under the age of 21 years is liable to imprisonment for a term not exceeding 7 years. A person who does an indecent act on a dependent family member under the age of 21 years is liable to imprisonment for a term not exceeding 7 years. The dependent family member cannot be charged as a party to the offence. It is not a defence to a charge under this section that the dependent family member consented</p> <p>A dependent family member is defined under section 57.</p>
<p>4(10): The criminal law includes a separate and distinct offence of prostituting children, defined in accordance with the Optional Protocol and sanctioned in a manner that reflects the gravity of the crime.</p>	<p><b>Partly</b></p>	<p><i>Crimes Ordinance 1961</i> –</p> <ul style="list-style-type: none"> <li>- s58L Illegal to live on the earnings of the prostitution of another person</li> <li>- s58M Illegal to procure girl or woman to have sexual intercourse with any male</li> </ul>	<p>Living on the earnings of the prostitution of another person generally is illegal, but an explicit reference to the commercial sexual exploitation of children is preferable, providing greater protection.</p>

			<p>s58M does make explicit reference to the procuring of girls for sex, however, a separate provision for children is still preferable as it is appropriate that the commercial sexual exploitation of children carry a heavier penalty than that of adults. There no such equivalent protective provision for the boy child.</p>
<p>4(11): The criminal law includes a specific criminal offence(s) relating to child pornography, defined in accordance with the Optional Protocol and sanctioned in a manner that reflects the gravity of the crime. Issues relating to internet pornography have been explicitly addressed. Offences to include the production, possession or dissemination of child pornography.</p>	<p><b>Partly</b></p>	<p><i>Crimes Ordinance 1961 –</i></p> <ul style="list-style-type: none"> <li>- s27 Everyone who, having an intent to commit an offence, does or omits an act for the purpose of accomplishing the object, is guilty of an attempt to commit the offence intended, whether under the circumstances it was possible to commit the offence or not</li> <li>- s43 Everyone is liable to imprisonment for a term not exceeding 2 years who, without lawful justification or excuse sells, exposes for sale, or otherwise distributes to the public any indecent model or object</li> </ul> <p><i>Indecent Publications Ordinance 1960 –</i></p> <ul style="list-style-type: none"> <li>- s2 Indecent document defined to include any form of pornography</li> <li>- s3 Every person commits an offence who sells, or delivers by way of hire, or offers for sale or hire, or has in his possession for sale or hire, or prints or causes to be printed or delivers an indecent document...</li> </ul>	<p>Attempts to commit an offence are a crime.</p> <p>General prohibition on pornographic material. Full compliance with this indicator requires a specific prohibition on child pornography (otherwise known as ‘audio or visual images of child sex abuse’) in any form and for penalties that reflect the seriousness of the crime. The penalty provided under the current legislation is a maximum of 3 months imprisonment. There is also a need to explicitly address this issue in relation to the Internet and other forms of information and communication technologies. Refer to the UN Committee on the Rights of the Child ‘General Comment No. 13 (2011)’, paragraphs 23 and 29 for further guidance on this issue.</p> <p><b>Crimes Act 2013</b>  A person who is charged under section 76 (Publication, Distribution or exhibition of indecent material on child) is liable to imprisonment for a term not exceeding 5 years.</p>

4(12): The law includes 'extraterritorial' provisions permitting the prosecution of nationals/residents for unlawful acts committed against children in other countries.	<b>Partly</b>	<i>Crimes Ordinance 1961</i> - - s3 The Court of Appeal and the Supreme Court and the District Court shall have jurisdiction to hear and determine any matter for which this Ordinance or any other law provides such Court with jurisdiction irrespective of the whether any act or omission or event occurs in Samoa or any other place.	Not a specific offence but possible for charges to be pressed in Samoa in relation to sexual activities with children overseas.
4(13): Extradition laws or extradition arrangements are in place to ensure that perpetrators are prosecuted either in their country of origin, or in the country in which the offence was committed.	<b>Yes</b>	<i>The Extradition Act 1974</i>  <i>Crimes Ordinance 1961</i> - - s3 The Court of Appeal and the Supreme Court and the District Court shall have jurisdiction to hear and determine any matter for which this Ordinance or any other law provides such Court with jurisdiction irrespective of the whether any act or omission or event occurs in Samoa or any other place.  <i>Mutual Assistance in Criminal Matters Act 2007</i> - - s5 Nothing in this Act authorises: (a) the extradition or rendering of any person; or (b) the arrest or detention, with a view to extradition or rendering, of any person.	Provision for extradition of offenders for trial in Samoa or elsewhere and granting jurisdiction for charges to be pressed in Samoa in relation to crimes under Samoan law committed overseas.  In spite of s5 of the <i>Mutual Assistance in Criminal Matters Act 2007</i> , the Act provides for the AG to request assistance from foreign states to locate or identify persons (8), obtain evidence (9), examine or cross-examine a person providing evidence or documentation (10), arrange attendance a of person in Samoa to assist with a criminal investigation (11). The Act also provides for the AG to consider similar request to Samoa from foreign states.
4(14): Government has acceded to and promoted bilateral and multilateral measures to protect the child from sexual abuse and sexual exploitation.	<b>No</b>		(Need to confirm with MFAT???)
4(15): No discriminatory provisions in protective legislation in relation to sexual abuse and exploitation.	<b>No</b>		Female child sexual abuse and male child sexual abuse are completely separate crimes under legislation. Different sentences apply according to the sex of the victim, with no protection for the boy child at all in some circumstances.

			(This has been addressed under the Crimes Act 2013 please refer to notes on this in this matrix)
4(16): Institutions dealing with reports of sexual abuse and exploitation of children are required to record and report disaggregated data in relation to reports received and actions taken	<b>No</b>		

<b>5 Abduction, sale and trafficking CRC Articles: 1, 2, 3, 4, 6, 11, 12, 34, 35 and 36</b>			
<b>Child protection indicator</b>	<b>Compliance</b>	<b>Relevant legislation</b>	<b>Comments</b>
5(1): A central authority been designated to deal with issues of international child abductions.	<b>No</b>		Not specified in legislation
5(2): Legal provisions are in place to secure the prompt return of children wrongfully removed to or retained in the country and to ensure that rights of custody and access under the law of other countries are effectively respected.	<b>No</b>		Not specified in legislation
5(3): Courts empowered to make any orders necessary to prevent child abduction	<b>No</b>		Not specified in legislation
5(4): Laws and policies support effective communication of court orders re travel restrictions etc. to border officials.	<b>No</b>		Not specified in legislation
5(5): State institutions empowered to release information that will help to trace the	<b>No</b>		Not specified in legislation

whereabouts of abducted children.			
5(6): The criminal law includes a specific crime relating to sale of children, defined broadly in accordance with the Optional Protocol to the CRC, and sanctioned in a manner that reflects the gravity of the crime.	<b>Partly</b>	<p><i>Crimes Ordinance 1961</i>–</p> <ul style="list-style-type: none"> <li>- s83 Abduction of woman or girl for marriage or sexual intercourse liable to 7 years imprisonment</li> <li>- s83A Kidnapping of any person to be confined or imprisoned or taken out of Samoa liable to 10 years imprisonment</li> <li>- s83B Abduction of any child under 16 with intent to deprive carers of the child or, if child is a girl, with intent to have sexual intercourse with the girl liable for 7 years imprisonment</li> </ul> <p><i>The Infants Ordinance 1961</i> –</p> <ul style="list-style-type: none"> <li>- s12 Any person having the custody or control of any child under the age or apparent age of 14 years who .. causes or procures such child to be ill-treated, neglected abandoned or exposed commits an offence. [Family Safety Act 2011 [DRAFT] s26(1) proposes increasing the age limit here to 18 years]</li> </ul>	<p>Some protection under law but no explicit provision prohibiting the sale and trafficking of children.</p> <p><i>Crimes Act 2013</i> Under section 125 a person with intent to deprive any parent or guardian or other person having the lawful care of charge of any child under the age of 16 years of the possession of the child, or with intent to have sexual connection with any child under the age of 16 years old, unlawfully, takes or entices away or detains the child; or receives the child, knowing that the child has been so taken or enticed away or detained, will be liable if convicted to imprisonment for a term not exceeding 10 years who,</p> <p>It is immaterial whether or not the child consents, or is taken or goes at the child’s own suggestion, or whether or not the offender believed the child to be of or over the age of 16.</p>
5(7): The criminal law includes the specific crime of trafficking in humans, defined in accordance with the Trafficking Protocol, and sanctioned in a manner that reflects the gravity of the crime.	<b>Partly</b>	<p><i>Crimes Ordinance 1961</i>–</p> <ul style="list-style-type: none"> <li>- s83 Abduction of woman or girl for marriage or sexual intercourse liable to 7 years imprisonment</li> <li>- s83A Kidnapping of any person to be confined or imprisoned or taken out of Samoa liable to 10 years imprisonment</li> <li>- s83B Abduction of any child under 16 with intent to deprive carers of the child or, if child is a girl, with</li> </ul>	<p>Some protection under law but no explicit provision prohibiting the sale and trafficking of children</p> <p><i>Crimes Act 2013</i> Part XIII of the bill deals with Smuggling and Trafficking of People.</p>

		<p>intent to have sexual intercourse with the girl liable for 7 years imprisonment</p> <p><i>The Infants Ordinance 1961 –</i></p> <ul style="list-style-type: none"> <li>- s12 Any person having the custody or control of any child under the age or apparent age of 14 years who .. causes or procures such child to be ill-treated, neglected abandoned or exposed commits an offence. [Family Safety Act 2011 [DRAFT] s26(1) proposes increasing the age limit here to 18 years]</li> </ul>	<p>A person guilty of smuggling people or assisting unauthorised migrants under section 148 is liable if convicted to imprisonment for a term not exceeding 7 years.</p> <p>A person guilty of trafficking people by means of coercion or deception under section 149 is liable if convicted to imprisonment for a term not exceeding 10 years.</p> <p>Aggravating factors listed under section 150 to be considered by the competent Court when sentencing a person convicted under section 149 includes age of the person in respect of whom the offence was committed and, in particular, whether the person was under the age of 18 years.</p> <p>The Crimes Bill under section 151 convicts a person who <b>deals in people under 18 for sexual exploitation, removal of body parts, or engagement in forced labour</b>, to an imprisonment term not exceeding 14 years.</p>
<p>5(8): The laws relating to human trafficking provide additional penalties where trafficking involves children</p>	<p><b>No</b></p>		<p>No specific laws on human trafficking.</p> <p>Crimes Act 2013</p> <p>This factor is part of aggravating factors listed under section 150 to be considered by the competent Court when sentencing a person convicted under section 149 (Trafficking in people by means of coercion or deception)</p> <p>includes age of the person in respect of whom the offence was committed and, in particular,</p>

			whether the person was under the age of 18 years.
5(9): The law also criminalizes activities related to trafficking, including forced or compulsory labour, debt bondage, forced marriage, forced prostitution, unlawful confinement, labour exploitation, and illegally withholding identity papers.	<b>Partly</b>	<i>The Constitution of the Independent State of Western Samoa Act 1960 –</i> - s8 No person shall be required to perform forced or compulsory labour	Not child specific and not specified as an offence (This has been partly addressed under section 151 of the Crimes Act 2013.  <b>151. Dealing in people under 18 for sexual exploitation, removal of body parts, or engagement in forced labour-</b> (1) Every one is liable to imprisonment for a term not exceeding 14 years who - (a) sells, buys, transfers, barter, rents, hires, or in any other way enters into a dealing involving a person under the age of 18 years for the purpose of - (i) the sexual exploitation of the person; or (ii) the removal of body parts from the person; or (iii) the engagement of the person in forced labour; or (b) engages a person under the age of 18 years in forced labour; or (c) permits a person under the age of 18 years to be engaged in forced labour; or (d) detains, confines, imprisons, or carries away a person under the age of 18

			<p>years for the purpose of -</p> <ul style="list-style-type: none"> <li>(i) the sexual exploitation of the person; or</li> <li>(ii) the removal of body parts from the person; or</li> <li>(iii) the engagement of the person in forced labour; or</li> </ul> <p>(e) removes, receives, transports, imports, or brings into any place a person under the age of 18 years for the purpose of -</p> <ul style="list-style-type: none"> <li>(i) the sexual exploitation of the person; or</li> <li>(ii) the removal of body parts from the person for a material benefit; or</li> <li>(iii) the engagement of the person in forced labour; or</li> </ul> <p>(f) induces a person under the age of 18 years to sell, rent, or give himself or herself for the purpose of -</p> <ul style="list-style-type: none"> <li>(i) the sexual exploitation of the person; or</li> <li>(ii) the removal of body parts from the person for a material benefit; or</li> <li>(iii) the engagement of the person in forced labour; or</li> </ul> <p>(g) induces a person to sell, rent, or give another person (being a person who is under the age of 18 years and who is dependent on him or her or in his or her charge) for the purpose of -</p> <ul style="list-style-type: none"> <li>(i) the sexual exploitation of the other person; or</li> <li>(ii) the removal of body</li> </ul>
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			<p>parts from the other person; or</p> <p>(iii) the engagement of the other person in forced labour; or</p> <p>(h) builds, fits out, sells, buys, transfers, rents, hires, uses, provides with personnel, navigates, or serves on board a ship, aircraft, or other vehicle for the purpose of doing an act stated in any of paragraphs (a) to (g); or</p> <p>(i) agrees or offers to do an act stated in any of paragraphs (a) to (h).</p> <p>(2) It is a defence to a charge under this section if the person charged proves that he or she believed on reasonable grounds that the person under the age of 18 years concerned was of or over the age of 18 years.</p> <p>(3) For the purposes of subsection (1), <b>sexual exploitation</b>, in relation to a person, includes the following acts:</p> <p>(a) the taking by any means, or transmission by any means, of still or moving images of the person engaged in explicit sexual activities (whether real or simulated):</p> <p>(b) the taking by any means or transmission by any means, for a material benefit, of still or moving images of the person's genitalia, anus, or breasts (not being an act described in subsection (4) or subsection (5)):</p> <p>(c) the person's participation in a performance or display (not being an act described in subsection (4)) that -</p> <p>(i) is undertaken for a material benefit; and</p>
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			<p>(ii) involves the exposure of the person's genitalia, anus, or breasts:</p> <p>(d) the person's undertaking of an activity (for example, employment in a restaurant) that—</p> <p>(i) is undertaken for a material benefit; and</p> <p>(ii) involves the exposure of the person's genitalia, anus, or breasts.</p> <p>(4) For the purposes of paragraphs (b) and (c) of subsection (3), <b>sexual exploitation</b>, in relation to a person, does not include the recording or transmission of an artistic or cultural performance or display honestly undertaken primarily for purposes other than the exposure of body parts for the sexual gratification of viewers.</p> <p>(5) For the purposes of subsection (3)(b), <b>sexual exploitation</b>, in relation to a person, does not include the taking or transmission of images of the person's genitalia, anus, or breasts for the purpose of depicting a medical condition, or a surgical or medical technique, for the instruction or information of health professionals.</p> <p>(6) For the purposes of subsection (3)(b), <b>sexual exploitation</b>, in relation to a person, does not include the taking or transmission of images of the person's genitalia, anus, or breasts if the images are honestly intended—</p> <p>(a) to provide medical or health education; or</p>
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			<p>(b) to provide information relating to medical or health matters; or</p> <p>(c) to advertise a product, instrument, or service intended to be used for medical or health purposes.</p> <p>(7) The person under the age of 18 years in respect of whom an offence against this section was committed cannot be charged as a party to the offence.</p> <p>(8) This section does not limit or affect the generality of section 148 and 149.</p>
5(10): The law imposes civil or criminal liability on legal entities (travel agencies, marriage brokers, sex shops, bars, brothels or employment agencies) for trafficking offences.	<b>No</b>		<p>No specific laws on human trafficking.</p> <p>Crimes Act 2013</p> <p><b>149. Trafficking in people by means of coercion or deception-</b>(1) A person who:</p> <p>(a) arranges the entry of a person into Samoa or any other state by one or more acts of coercion against the person, one or more acts of deception of the person, or both; or</p> <p>(b) arranges, organises, or procures the reception, concealment, or harbouring in Samoa or any other state of a person, knowing that the person's entry into Samoa or that state was arranged by one or more acts of coercion against the person, one or more acts of deception of the person, or both.</p> <p>(2) Is liable to imprisonment for a term not exceeding 10 years.</p> <p>(3) Proceedings may be brought under this section even if the person coerced or deceived:</p> <p>(a) did not in fact enter the state concerned; or</p>

			(as the case may be) (b) was not in fact received, concealed, or harboured in the state concerned. (4) Proceedings may be brought under this section even if parts of the process by which the person coerced or deceived was brought or came to or towards the state concerned were accomplished without an act of coercion or deception.
5(11): The law provides for the seizure and confiscation of goods, assets and other instrumentalities used to commit or facilitate trafficking, and that proceeds or assets confiscated from traffickers be used to support trafficking victims/survivors.	<b>No</b>		No specific laws on human trafficking.  This can be addressed under <b><i>Proceeds of Crime Act 2007</i></b>
5(12): Measures are in place to assist the prosecution of those engaged in child trafficking outside of the jurisdiction.	<b>Partly</b>	<i>The Extradition Act 1974</i>  <i>Crimes Ordinance 1961 -</i> - s3 The Court of Appeal and the Supreme Court and the District Court shall have jurisdiction to hear and determine any matter for which this Ordinance or any other law provides such Court with jurisdiction irrespective of the whether any act or omission or event occurs in Samoa or any other place.  <i>Mutual Assistance in Criminal Matters Act 2007 -</i> - s5. Nothing in this Act authorises: (a) the extradition or rendering of any person; or (b) the arrest or detention, with a view to extradition or rendering, of any person.	Nothing specific to trafficking or to children, however, there is provision for extradition of offenders for trial in Samoa or elsewhere and granting jurisdiction for charges to be pressed in Samoa in relation to crimes under Samoan law committed overseas.  In spite of s5 of the <i>Mutual Assistance in Criminal Matters Act 2007</i> , the Act provides for the AG to request assistance from foreign states to locate or identify persons (8), obtain evidence (9), examine or cross-examine a person providing evidence or documentation (10), arrange attendance a of person in Samoa to assist with a criminal investigation (11). The Act also provides for the AG to consider similar request to Samoa from foreign states.

			<p>Crimes Act 2013</p> <p>Section 149 (1)(b) A person who arranges, organises, or procures the reception, concealment, or harbouring in Samoa or any other state of a person, knowing that the person's entry into Samoa or that state was arranged by one or more acts of coercion against the person, one or more acts of deception of the person, or both is liable to imprisonment for a term not exceeding 10 years.</p> <p>Section 149 (3) Proceedings may be brought under this section even if the person coerced or deceived:</p> <p>(a) did not in fact enter the state concerned; or (as the case may be)</p> <p>(b) was not in fact received, concealed, or harboured in the state concerned.</p>
5(13): Legal provisions and policies promote cooperation between relevant agencies, in particular the police, immigration and welfare services, in identifying child victims/survivors of trafficking	<b>No</b>		
5(14): Guidelines are in place for border officials for the identification and handling of child victims/survivors of trafficking.	<b>No</b>		
5(15): Procedures/guidelines provide for immediate and safe emergency care for children who have been rescued from trafficking.	<b>Partly</b>	<p><i>The Crimes Ordinance 1961 –</i></p> <p>- s34 Every person who intimidates another person with a view to compel them to do or to abstain from doing any act which he has a legal right to do or abstain from doing is guilty of an offence.</p>	<p>Provision only for the sanction of acts designed to intimidate child victims from pursuing their legal rights. No provision for the physical protection of them. In addition the protection available is not child specific.</p>

		- There are relevant provisions under the Crimes Act 2013 but not sure whether this is relevant for this part.	
5(16): Criminal trial procedures permit the use of testimony of foreign trafficked victims/survivors which was taken before repatriation, for example, through the use of video and audio tapes of the trafficked victims/survivors' testimony as evidence.	<b>No</b>	<i>The Criminal Procedure Act 1972</i> – - s28 A Judge or Magistrate or Fa'amasino Fesoasoani on the application of the informant, before or at any hearing, may make an order for the taking at any place of the evidence of any witness if they are satisfied that it is desirable or expedient in the interests of justice (SLRC recommendation for CPA- Act should include provisions to allow witnesses overseas to give evidence by video-conference hearings. Procedural details will be considered by SLRC in its review of the Evidence Act 1961.	Although the Court is empowered to make arrangements for the evidence of the child witness away from the accused, it is a discretion which depends on the sensitivity and awareness of the individual judge. There is no explicit protection of child victims from intimidating court processes.
5(17): Immigration laws permit foreign trafficked children to remain in the country, temporarily or permanently, in appropriate cases, and in accordance with the stated views of the child.	<b>No</b>		Not specified in legislation.
5(18): Protection, rehabilitation and support services are available to all child victims/survivors of trafficking regardless of nationality and agreement to appear as witnesses in any criminal proceedings.	<b>No</b>		Not specified in legislation.
5(19): Guidelines have been developed for the safe and timely return and repatriation of child victims/survivors of cross-border trafficking where appropriate.	<b>No</b>		Not specified in legislation.

<b>6</b>	<b>Child labour and children in street situations</b>
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CRC Articles: 1, 2, 3, 4, 6, 12, 32 and 33			
Child protection indicator	Compliance	Relevant legislation	Comments
6(1): Laws do not criminalize vagrancy or other status offences and children living and working on the street are not subject to arbitrary police arrest or detention.	?	<p><i>The Police Offences Ordinance 1961</i> s. 18 Hawker and peddler may peddle goods specified in section 18(1) provided that it does not breach any existing law regulating markets and upon obtaining a license from the Commissioner of police.</p> <p><i>Education Act 2009</i> Sections 20 and 21 regulates the employment of compulsory school aged children.</p>	The Police Offences Ordinance 1961 repealed and replaced the <b>Samoa Vagrancy Order 1931 (NZ)</b> .
6(2): Laws are in place to ensure appropriate standards for children's work and pay in both the formal and informal sectors.	<b>Partly</b>	<p><i>Occupational Health and Safety Act 2002</i> –</p> <ul style="list-style-type: none"> <li>- s11 An employer must take all reasonably practicable steps to protect the safety, health and welfare at work of employees and to provide and maintain a safe and healthy working environment including substances, systems of work and any building or public or private area in which work takes place.</li> </ul>	Some provision for safe work conditions for all employees, but specific minimum work conditions for children not specified in legislation. No mention of minimum wages for child workers.
6(3): Minimum age for employment is defined in legislation not less than 15 and at least equal to the age of completion of compulsory education.	<b>Partly ????</b>	<p><i>Education Act 2009</i> –</p> <ul style="list-style-type: none"> <li>- s20. Employment of compulsory school-aged child [aged 5-14] (1) Subject to subsection (3), it is an offence for a person to arrange for a compulsory school-aged child to engage in street trading or to carry out other work of any kind, whether for reward or not - (a) at any time during school hours; or (b) at any other time if the work would prevent or interfere with the child's attendance at school, active participation in school activities or the child's educational development. (3) Subsection (1) does not apply if: (a) the Chief Executive Officer has exempted</li> </ul>	<p>School attendance is compulsory until the age of 14, therefore it is illegal to employ any child under 14 in full-time employment. This does not quite meet the requirement of 15 years of age.</p> <p>Part-time employment of school children, i.e. under-14s, is permitted in 'safe and light work' so long as it is outside school hours and does not negatively interfere with their education or development. There is no minimum age for this type of work.</p>

		<p>the child from the obligation to be enrolled as a pupil at a school on a ground other than that the child is receiving a suitable education elsewhere than at school; or (b) the Chief Executive Officer has exempted the child from the obligation to attend school each day during the whole of the school day.</p> <p><i>The Labour and Employment Act 1972 –</i></p> <ul style="list-style-type: none"> <li>- s32 It shall be unlawful to employ any child under the age of 15 years of age in any place of employment except in safe and light work suited to his capacity and subject to such conditions as may be imposed by the Commissioner</li> </ul>	
<p>6(4): The law includes provisions regulating permissible work by children over the minimum age, including regulations defining the hours and conditions of work for children (formal and informal sector).</p>	<p><b>Partly</b></p>	<p><i>The Labour and Employment Act 1972 –</i></p> <ul style="list-style-type: none"> <li>- s32 Unlawful to employ any child under the age of 15 [except in 'safe and light' work] and no such child shall be employed on dangerous machinery or in any occupation or in any place under working conditions injurious or likely to be injurious to the physical or moral health of such child</li> </ul> <p><i>Occupational Health and Safety Act 2002 –</i></p> <ul style="list-style-type: none"> <li>- s11 An employer must take all reasonably practicable steps to protect the safety, health and welfare at work of employees and to provide and maintain a safe and healthy working environment including substances, systems of work and any building or public or private area in which work takes place.</li> </ul> <p><i>Education Act 2009 –</i></p> <ul style="list-style-type: none"> <li>- s20. Employment of compulsory school-aged child [aged 5-14] -(1) [...] it is an offence for a person to arrange for a compulsory school-aged child to engage in street trading or to carry out other work of</li> </ul>	<p>Some provision for safe work conditions for all employees. Prohibition on hazardous work under the age of 15. Work for compulsory school-aged children must not interfere with the child's educational development but this may be subjective. Furthermore 'safe and light work' is not adequately defined and there is no defined limit to the number of hours that can be worked per week.</p>

		any kind, whether for reward or not - (a) at any time during school hours; or (b) at any other time if the work would prevent or interfere with the child's attendance at school, active participation in school activities or the child's educational development.	
6(5): The law prohibits anyone under the age of 18 from engaging in any type of employment or work that by its nature or the circumstances in which it is carried out is likely to jeopardize the health, safety or morals of young persons, including hazardous work, work that interferes with the child's education or any work that involves cruel, inhuman or degrading treatment, the sale of children or servitude.	<b>Partly</b>	<i>The Labour and Employment Act 1972</i> – - s32 Unlawful to employ any child under the age of 15 [except in 'safe and light' work] and no such child shall be employed on dangerous machinery or in any occupation or in any place under working conditions injurious or likely to be injurious to the physical or moral health of such child	Protection only up to the age of 15
6(6): The law clearly defines the types of work that are prohibited for children.	<b>Partly</b>	<i>The Labour and Employment Act 1972</i> – - s32 Unlawful to employ any child under the age of 15 [except in 'safe and light' work] and no such child shall be employed on dangerous machinery or in any occupation or in any place under working conditions injurious or likely to be injurious to the physical or moral health of such child	A broad definition of what is considered hazardous work is provided but the terms "safe" and "light" work are not specified in legislation.  Protection from hazardous work is only up to the age of 15.
6(7): Exemptions to the definition of child labour are specified in legislation, for example, domestic assistance in the child's own family home.	<b>Partly</b>	<i>The Labour and Employment Act 1972</i> – - s32 employment of children under 15 unlawful except in safe and light work suited to his capacity, and subject to such conditions as may be imposed by the Commissioner ... no such child shall be employed as a worker upon any vessel unless such a vessel is under the personal charge of the parent or guardian of the child	Full compliance with this indicator requires more specific definition of exemptions from child labour prohibitions, for example, outlining exactly what "safe and light work" is.
6(8): The law prohibits the use of children for the purposes of begging.	<b>No????</b>	<b>Police Offences Ordinance 1961</b>  Section 15. Imposters, loiterers, and trespassers -	A person who causes or encourages a child to beg is liable upon conviction to an imprisonment term not exceeding 6 months or

		Every person shall be liable to imprisonment for a term not exceeding 6 months or to a fine of 1 penalty unit who wanders abroad or places himself in any public place to beg or gather alms, or causes or procures or encourages any child so to do.	to a fine of 1 penalty unit (ST\$100).
6(9): Penalties over and above standard criminal sanctions for drug activities for offenders who involve children in any aspect of the drugs trade.	<b>No????</b>	<p><i>Tobacco Control Act 2008</i> -</p> <p>- s23(1) No person shall sell any tobacco product to a person who is younger than 21 years.</p> <p><i>Narcotics Act 1961</i></p> <p><b>18. Penalty for unlawful supply or possession of narcotics</b> - (1) Every person is liable to imprisonment for a term not exceeding 14 years who, contrary to any provision of this Act or of the regulations, sells, gives, supplies, or administers, or offers to sell, give, supply, or administer, any narcotic to any person if that person is under the age of 21 years.</p>	
6(10): Employers required to have, and produce on demand, proof of age of all children working for them.	<b>Partly</b>	<p><i>The Labour and Employment Act 1972</i> –</p> <p>- s10 lawful for the Commissioner, or any officer authorised in writing by the Commissioner to interview any employer or any person employed in the undertaking ... and to require such person to give him any information in his possession relating to the employment of persons in the undertaking</p>	Provision for production of information in relation to employees but no specific requirement for the employer to have proof of age of employees.
6(11): Persons responsible for compliance with provisions concerning child labour are defined in legislation.	<b>Yes</b>	<p><i>Education Act 2009</i> -</p> <p>- s21(1) The carer of a compulsory school-aged child must not permit the child to engage in street trading or to carry out other work contrary to section 20 of this Act.</p>	

		<p><i>Labour and Employment Act 1972 –</i></p> <ul style="list-style-type: none"> <li>- s41 Any employer who enters into a contract of service contrary to any of the provisions of this Act shall be guilty of an offence and any person who fails to comply with any of the provisions of this Act shall be guilty of an offence.</li> <li>- s2 “Employer” means any person employing a worker or workers, and includes the manager or agent of an employer.</li> </ul>	
6(12): Labour/criminal laws provide for appropriate penalties for those who violate child labour laws.	<b>Yes</b>	<p><i>Education Act 2009 –</i></p> <ul style="list-style-type: none"> <li>- s20(2) Any person who arranges work for a compulsory school-aged child is liable to a fine not exceeding 100 penalty units in the case of a natural person, and in the case of a company or other entities, a fine not exceeding 500 penalty units.</li> <li>- s21(2) Any carer allowing a compulsory school-aged child to work in contravention of the provisions of the Act commits an offence and shall be liable to a fine not exceeding 50 penalty units.</li> </ul> <p><i>The Labour and Employment Act 1972 –</i></p> <ul style="list-style-type: none"> <li>- Any employer who enters into a contract of service contrary to any of the provisions of this Act shall be guilty of an offence, and on conviction shall be liable to a fine not exceeding \$500</li> </ul>	
6(13): Labour inspectors are trained and sufficiently empowered to enforce child labour laws, including the authority to immediately remove a child from a work environment that is hazardous or harmful to the child’s health or physical, mental, spiritual, moral or social development.	<b>Partly</b>	<p><i>The Labour and Employment Act 1972 –</i></p> <ul style="list-style-type: none"> <li>- s7(c) to make inspections of conditions of work and to take any other necessary action for the purpose of ensuring that there is fulfilment of the obligations placed upon any employer, worker or other person under any award or industrial agreement, or under any of the Acts and regulations administered by the Department</li> </ul>	Provision empowering department and Commissioner to inspect situations of work or employment, but no specification as to regularity of inspection, specific awareness of child labour issues or the power to remove a child from a hazardous work situation.

		<ul style="list-style-type: none"> <li>- s10 lawful for the Commissioner, or any officer authorised in writing by the Commissioner to enter and inspect at all reasonable times any place of employment ... and to interview any employer or any person employed in the undertaking ... and to require such person to give him any information in his possession relating to the employment of persons in the undertaking</li> </ul>	
6(14): Independent, child-friendly complaints avenue for investigation, consideration and resolution of complaints regarding breaches of children's labour rights.	<b>Partly</b>	<p><i>The Labour and Employment Act 1972 –</i></p> <ul style="list-style-type: none"> <li>- s6 The general functions of the [Labour] department shall be to advise workers and employers on all industrial matters, to take such measures as may be appropriate under the Act to ensure safe and healthy working conditions, to encourage good relationship between employers and workers, and to ensure the proper fulfilment by employers, workers and other persons of obligations placed upon them by awards and industrial agreements and by the Acts and regulations administered by the Department</li> <li>- s38 The Commissioner shall have power to conciliate in whatever manner he shall think fit or advisable, when requested to do so by either party to an industrial dispute, or by either party in the case of an industrial grievance between an employer and one or more workers</li> </ul> <p><i>The District Courts Act 1969 –</i></p> <ul style="list-style-type: none"> <li>- s43 An infant may sue for money which may be due to him for wages or piecework, or for work as a servant, in the same manner as if he were of full age</li> </ul>	<p>Independent complaints avenue for workers generally, but not child- specific or child-friendly.</p> <p>Perhaps the National human Rights Commission will address these issues as well once it is established.</p>
6(15): Prohibition on the use of children for all forms of research, including medical or scientific experimentation, unless appropriate consents have been obtained from the child	<b>No</b>		

and/or parents or legal guardians			
6(16): A national strategy exists for the elimination of the worst forms of child labour	<b>No</b>		Check with Taupisi from Labour Division of the Ministry of Commerce Industries and Labour to see whether this was addressed during the consultations in the latest reform of the Labour Laws that was done last year.
6(17): No discriminatory provisions in the labour law	<b>Yes</b>		

7 Child-friendly investigative and court procedures CRC Articles: 1, 2, 3, 4, 6, 12, and 39			
Child protection indicator	Compliance	Relevant legislation	Comments
7(1):Criminal procedure laws/guidelines include measures to protect the rights and interests of children at all stages of the justice process and to reduce trauma and secondary traumatising, including:	<b>No</b>	<p><i>Alternative Dispute Resolution Act 2007</i> -</p> <ul style="list-style-type: none"> <li>- s4(1) Prior to the trial of any criminal or civil proceeding either party may make application to the Court for any order necessary to protect the interests of either party or to ensure that a fair trial of all the issues is facilitated, and such applications may relate to: (e) a challenge to the proceedings on the grounds of the breach of any constitutional right of the accused person, or any applicable human rights issue;</li> <li>- 4(3) Upon hearing any application under this section the Court may make any necessary order to: (a) protect the rights of any party to the proceedings.</li> <li>- s15(1) In proceedings relating to an offence to which this Part applies, a Court may, with</li> </ul>	<p>Part III of the Alternative Dispute Resolution Act 2007 sets out 'Mediation Procedures' and Part V outlines guidelines for 'Reconciliation'. Although the Act makes no specific mention of children, care must be taken to uphold the rights of child victims / survivors if alternative dispute mechanisms are being considered, especially the child's rights to be listened to and taken seriously and to ensure that they are not pressured or manipulated into a settlement for the purposes of expediency. Caution on this topic is given in relation to victims of 'domestic violence', but not explicitly children (or women victims of violence by perpetrators outside the 'domestic sphere').</p> <p>The 'no-drop' policy provision of the draft Family Safety Act is subject to the discretion of</p>

		<p>the consent of the complainant, promote reconciliation or conciliation and encourage the settlement of the proceedings in an amicable way in such cases which are: (a) substantially of a personal or private nature; and (b) not aggravated in degree.</p> <p>- s15(3) A Court shall only proceed if it is satisfied that it is in the interests of any aggrieved party to proceed in such a manner, and in any case involving domestic violence the Court shall ensure that the victim of the violence does not submit to any proceedings being undertaken in accordance with this section by reason of pressure being exerted in any form.</p> <p><i>Family Safety Act 2013</i></p> <p>- s16(1) where a report of domestic violence involves any form of physical or sexual abuse, and provided that there is sufficient evidence for doing so, every Police Officer handling the matter shall-(a) ensure and undertake to do all things necessary in order that a charge or information is laid with the Court in order to commence prosecution of the matter in Court; and (b) not endeavour to withdraw a charge or information laid under paragraph (a).</p> <p>- s16(2) [However] the Commissioner may apply to withdraw a charge or information, or direct that a charge not be laid with the Court with respect to any physical or sexual abuse reported under this Act where the Commissioner thinks it is appropriate to do</p>	<p>the Police Commissioner.</p> <p>The Samoa Law Reform Commission is undertaking a review of the Criminal Procedure Act 1972: general recommendations about protection of vulnerable victims and witnesses</p>
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		so in the circumstances.	
7(1)(a): Inter-agency referral procedures to promote coordination between police, health care workers, social workers and other service providers.	<b>No</b>		
7(1)(b): Coordination/referral mechanism is in place for children who come to the attention of the police.	<b>No</b>	<p><i>Family Safety Act 2013</i></p> <ul style="list-style-type: none"> <li>- s15(2) In providing assistance [...], a Police Officer shall: (c) where the complainant is a person under 18 years of age, to refer such person to a Child Welfare Officer.</li> <li>- s15(3) [However] no Police Officer shall be required to provide assistance where: (a) the report has already been duly attended to by another Police Officer; or (b) there are financial or transport constraints on the Police Officer to provide assistance at the earliest opportunity.</li> </ul>	This will be partly addressed if the Family Safety Act 2013.
7(1) (c): In any actions taken the best interests of the child will be the primary consideration.	<b>Partly</b>	<p><i>Alternative Dispute Resolution Act 2007 -</i></p> <ul style="list-style-type: none"> <li>- s4(1) Prior to the trial of any criminal or civil proceeding either party may make application to the Court for any order necessary to protect the interests of either party or to ensure that a fair trial of all the issues is facilitated, and such applications may relate to: (e) a challenge to the proceedings on the grounds of the breach of any constitutional right of the accused person, or any applicable human rights issue;</li> <li>- s4(3) Upon hearing any application under this section the Court may make any necessary order to: (a) protect the rights of any party to the proceedings</li> </ul>	The 'welfare' of the child is cited as a factor in decision-making in some legislation relating to family separation (see section 2 above), and the 'best interests' of the child are referred to as a 'guiding value and principle' in the MWCSD National Policy for Children in Samoa 2010-2015. However, this is often not cited explicitly or consistently in relevant legislation and criminal procedure guidelines.

		<p><i>Family Safety Act 2013</i></p> <p>- 10 (3) [...] where the court is satisfied that it is in the best interests of any child, it may-</p> <p>(a) refuse the respondent [i.e. alleged perpetrator of domestic violence] contact with such child; or (b) order contact with such child on such conditions as it may consider appropriate.</p>	
7(1) (d): Any actions taken to take into account the child's views in accordance with their age and maturity and respect the child's right to privacy.	<b>No</b>		The right of the child to be heard is referred to as a 'guiding value and principle' in the MWCS National Policy for Children in Samoa 2010-2015. However, apart from one provision in relation to over-12s needing to consent to adoption, this is not cited explicitly or consistently in relevant legislation and criminal procedure guidelines.
7(1) (e): The law guarantees children the right to participate in any judicial proceedings that affect them, to express their views, and to have those views given due weight.	<b>No</b>		
7(1) (f): Child-friendly interview environments and interview techniques (police, prosecutors, judges, social workers etc.)	<b>No</b>	<p><i>Police Powers Act 2007 –</i></p> <p>- s22(2) Where a forensic procedure is carried out on a minor, wherever possible a relative of that minor shall be present during the carrying out of that forensic procedure.</p>	Police Powers Act 2007 refers only to the taking of forensic samples from suspects, not victims/survivors. [Is there legislation mandating health services to do this instead?] No
7(1) (g): Special procedures to reduce the number and length of interviews child victims/survivors are subjected to.	<b>No</b>		
7(1) (h): Victim/survivor/witness support program to familiarize children with the court process and provide support at all stages of the process, including social and legal	<b>No</b>		

counselling.			
7(1) (i): Children are entitled to have a support person present with them at all stages of the investigation and trial proceedings (legal/social).	<b>No</b>		
7(1) (j): Law permits child-friendly court procedures, including alternative arrangements for giving testimony such as screens, video-taped evidence and closed circuit television.	<b>No</b>	<p><i>Family Safety Act 2013</i></p> <p>- s8(1) The Court may [...] order that in the examination of witnesses, a respondent who is not represented by a legal representative shall not be entitled to directly cross-examine a witness being a person who is in a domestic relationship with the respondent. (2) [In such cases] the Court shall ask the questions, instead of the respondent, to the witness.(3) The Court may:(a) permit a screen to be placed between the complainant and the respondent during cross examination; or (b) order that video conferencing, video recordings or audio recordings be provided where the complainant or a witness so requests it provided that the witness giving evidence through such mediums shall still be required to be personally examined by the respondent and the provisions of subsection (2) may apply where the witness so chooses.</p>	<p>This will be partly addressed if the Family Safety Bill is passed.</p> <p>The Samoa Law Reform Commission is undertaking a review of the Criminal Procedure Act 1972.-recommendation to allow evidence by video-conferencing.</p>
7(1) (k): Measures to ensure child victims/survivors are protected from direct confrontation with persons accused of violating their rights and from hostile, insensitive or repetitive questioning or interrogation.	<b>No</b>	<p><i>The Criminal Procedure Act 1972 –</i></p> <p>- s28 A Judge or Magistrate or Fa'amasino Fesoasoani on the application of the informant, before or at any hearing, may make an order for the taking at any place of the evidence of any witness if they are</p>	<p>Although the Court is empowered to make arrangements for the evidence of the child witness away from the accused, it is a discretion which depends on the sensitivity and awareness of the individual judge. There is no explicit protection of child victims from</p>

		<p>satisfied that it is desirable or expedient in the interests of justice</p> <p><i>Family Safety Act 2013</i></p> <p>- s8(1) The Court may [...] order that in the examination of witnesses, a respondent who is not represented by a legal representative shall not be entitled to directly cross-examine a witness being a person who is in a domestic relationship with the respondent. (2) [In such cases] the Court shall ask the questions, instead of the respondent, to the witness.(3) The Court may:(a) permit a screen to be placed between the complainant and the respondent during cross examination; or (b) order that video conferencing, video recordings or audio recordings be provided where the complainant or a witness so requests it provided that the witness giving evidence through such mediums shall still be required to be personally examined by the respondent and the provisions of subsection (2) may apply where the witness so chooses.</p>	intimidating court processes.
7(1) (l): Law requires investigations and trials of cases involving child witnesses to be expedited and prioritized in the legal system.	<b>No</b>		-
7(1) (m): Measures to protect the child's privacy, such as closed court proceedings and bans on publishing the child's identity or any information leading to identification of the child.	<b>Partly</b>	<p><i>Young Offenders Act 2007</i> -</p> <p>- s8(3) The name and identifying details of any victim involved in an offence for which a Young Person is charged must not be published by the Media or any other person.</p> <p>- s8(4) Any person, media person, media</p>	In cases where the offender is themselves a child, the Young Offenders Act bans publication of a information. However, if the offender is not a child then the Court is empowered to prohibit publication but there is no blanket prohibition on media identification

		<p>organization, media office or media authority, who publishes or causes to publish any information or publication prohibited by this section commits an offence and shall be liable upon conviction to a fine not exceeding 100 penalty units.</p> <p><i>The Constitution of the Independent State of Western Samoa Act 1960 –</i></p> <ul style="list-style-type: none"> <li>- s9(1) ...but the public and representatives of the news service may be excluded from all or part of the trial ...where the interests of juveniles or the protection of the private life of the parties so require...</li> </ul> <p><i>The Criminal Procedure Act 1972 –</i></p> <ul style="list-style-type: none"> <li>- s61 Court may exclude the public and representatives of news services from all or part of the trial and prohibit the publication of the name, or of any particulars likely to lead to the identification of, any person connected with the trial</li> </ul> <p><i>Family Safety Act 2013</i></p> <ul style="list-style-type: none"> <li>- s14(1) limits those who may be present in the Court; (2) Nothing in this section limits any other power of the Court to hear proceedings in chambers or to exclude any person from attending such proceedings.(3) No person or the media, shall publish in any manner any information which might, directly or indirectly, reveal the identity of any party to the proceedings unless allowed by the Court. (4) The Court may direct that any</li> </ul>	<p>of children involved in legal proceedings.</p> <p>The SLRC has raised this issue (for all victims / survivors, not children specifically) for consultation relating to review of the Criminal Procedures Act 1972.</p>
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		other information relating to proceedings held in terms of this Act shall not be published by any person or the media if it is satisfied that it is in the best interest of justice.	
7(1)(n): Measures to protect the safety of child victims/survivors and their family and to prevent intimidation and retaliation, including safe shelter (emergency and longer-term); relocation; and prohibition on the disclosure of information concerning the victim/survivor's identity and whereabouts..	<b>Partly</b>	<p><i>The Crimes Ordinance 1961 –</i></p> <ul style="list-style-type: none"> <li>- s34 Every person who intimidates another person with a view to compel them to do or to abstain from doing any act which he has a legal right to do or abstain from doing is guilty of an offence.</li> </ul> <p><i>Family Safety Act 2013-</i></p> <ul style="list-style-type: none"> <li>- s15(2) In providing assistance [...], a Police Officer shall: where necessary, make arrangements for the complainant and the complainant's dependants to find a suitable shelter, to obtain medical treatment or counselling service where needed; where the complainant is a person under 18 years of age, to refer such person to a Child Welfare Officer.</li> <li>- s15(3) [However] no Police Officer shall be required to provide assistance where: (a) the report has already been duly attended to by another Police Officer; or (b) there are financial or transport constraints on the Police Officer to provide assistance at the earliest opportunity.</li> </ul>	<p>Provision only for the sanction of acts designed to intimidate child victims from pursuing their legal rights. No provision for the physical protection of them. In addition the protection available is not child specific.</p> <p>This may be addressed to some degree with the Family Safety Act 2013, but the relevant provision therein still has the potential to be constrained by lack of resources.</p>
7(1)(o): Requirement that police, prosecutors, lawyers and judges receive specialized training in dealing with cases where children are victims/survivors.	<b>No</b>		

7(1) (p): Police, prosecutors and courts have specialised units, or designated specialists to handle cases involving child victims/survivors/witnesses.	<b>No</b>		
7(2): Prohibition on requirement for corroboration of child victim/survivor's evidence in criminal proceedings for sexual assault.	<b>No</b>		Not specified in legislation.
7(3): Prohibition of the use of prior sexual conduct to establish non-consent in sexual assault proceedings.	<b>No</b>	<i>Evidence Ordinance 1961 -</i> - s17 In any proceeding the Court may limit in any manner and to any extent which it thinks fit the cross-examination of any witness as to credit, and shall refuse to permit any such cross-examination which is needlessly offensive or injurious to the witness, having	Court empowered to prohibit such evidence but no blanket legislative prohibition on such evidence.

		regard to the nature or gravity of the imputations made against him, to the importance of his evidence, and to the effect of such imputation upon his credibility.	
7(4): Prohibition on requiring proof of resistance to establish non-consent in sexual assault proceedings.	<b>Partly</b>	<i>The Crimes Ordinance 1961</i> – - s47 Rape is the act of a male person having sexual intercourse with a woman or girl: (a) without her consent freely and voluntarily given; or (b) with consent extorted by fear or bodily harm or by threats; or (c) with consent extorted by fear, on reasonable grounds, that the refusal of consent would result in the death of or grievous bodily injury to a third person; or (d) with consent obtained by personating her husband; or (e) with consent obtained by a false and fraudulent representation as to the nature and quality of the act.	Definition of rape includes circumstances of non-consent which do not require resistance to amount to non-consent. Although no explicit prohibition, the definition of rape clearly includes acts where resistance would be inappropriate.
7(5): Expert evidence re. patterns of disclosure or behaviour in child victims/survivors automatically admissible.	<b>No</b>		
7(6): The law guarantees access to an interpreter at any stage of the process on request	<b>Yes</b>	<i>The Constitution of the Independent State of Western Samoa Act 1960</i> – - s9(4)(e) right to free assistance of an interpreter	Not child specific
7(7): All processes free from discriminatory provisions.	<b>No</b>	<i>The Constitution of the Independent State of Western Samoa Act 1960</i> – - s15(4) Nothing in the constitutional anti-discrimination provisions will affect the operation of any existing law or the	Explicitly condones any discriminatory provisions existing in legislation or the practice of the executive or administration at independence.

		<p>maintenance by the State of any executive or administrative practice being observed on Independence Day</p> <p><i>Family Safety Act 2013</i></p> <ul style="list-style-type: none"> <li>- s15 [...] every Police Officer who receives a report of domestic violence by any person shall at the earliest opportunity render such assistance to the complainant without any discrimination on any ground such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth, disability or other status and guarantee to all persons equal and effective protection as may be required in the circumstances.</li> </ul>	
7(8): Independent and child-friendly complaints tribunal available for the investigation, consideration and resolution of any complaints by children regarding their treatment within the justice system.	<b>No</b>	<p><i>The Komesina o Sulufaiga (Ombudsman) Act 1988 –</i></p> <ul style="list-style-type: none"> <li>- Provides for an Ombudsman's office to investigate any complaints by individuals in relation to treatment by listed public institutions.</li> <li>- s13 All complaints must be made in writing.</li> </ul>	Investigation limited to specified public institutions, the service is not specified to cater for children. Nor is it set up in a child accessible way – for example, complaints must be in writing. There is a risk that children's complaints in a non child specific service could be dismissed as frivolous.
7(9): Legal recognition of informal customary law processes.	<b>Yes</b>	<i>Alternative Dispute Resolution Act 2007</i>	

<b>8</b>	<b>Rehabilitation</b>		
	<b>CRC Articles: 1, 2, 3, 4, 6, 12 and 39</b>		
<b>Child protection indicator</b>	<b>Compliance</b>	<b>Relevant legislation</b>	<b>Comments</b>

<p>8(1): Child victims/survivors of neglect, exploitation, abuse, torture or any other form of cruel, inhuman or degrading treatment or punishment or armed conflicts are entitled to compensation.</p>	<p><b>No</b></p>		<p>There is no restriction on the pursuit of civil remedies through the Courts, however, there is no legislative provision for compensation for child victims of crime.</p>
<p>8(2): Legislative provisions exist protecting privacy and identity of child victims/survivors with appropriate sanctions.</p>	<p><b>Partly</b></p>	<p><i>Young Offenders Act 2007</i> -</p> <ul style="list-style-type: none"> <li>- s8(3) The name and identifying details of any victim involved in an offence for which a Young Person is charged must not be published by the Media or any other person.</li> <li>- s8(4) Any person, media person, media organization, media office or media authority, who publishes or causes to publish any information or publication prohibited by this section commits an offence and shall be liable upon conviction to a fine not exceeding 100 penalty units.</li> </ul> <p><i>The Constitution of the Independent State of Western Samoa Act 1960</i> –</p> <ul style="list-style-type: none"> <li>- s9(1) ...but the public and representatives of the news service may be excluded from all or part of the trial ...where the interests of juveniles or the protection of the private life of the parties so require...</li> </ul> <p><i>The Criminal Procedure Act 1972</i> –</p> <ul style="list-style-type: none"> <li>- s61 Court may exclude the public and representatives of news services from all or part of the trial and prohibit the publication of the name, or of any particulars likely to lead to the identification of, any person connected with the trial</li> <li>- s62 Any person who disobeys a Court order in relation to the exclusion of the public/media from Court proceedings or the prohibition of publication of</li> </ul>	<p>In cases where the offender is themselves a child, the Young Offenders Act bans publication of any information. However, if the offender is not a child then the provisions empower the Courts to order the full protection of the identity of the child victim but do not require that they do so. Full compliance with this indicator requires that the identity of child victims be required to be fully protected by law.</p> <p>Although there is a punitive measure available for breach of the child victim's right to privacy it is token and does not attempt to rectify the harm caused by the breach.</p>

		the name or details of any person connected to the trial is guilty of an offence (fine of up to \$100)	
8(3): The law provides for a range of services to support the protection and psychological recovery and reintegration of child victims/survivors of abuse and exploitation, including: 8(3)(a): Short-term care, where necessary, by foster families, shelters, etc.	<b>No</b>		
8(3) (b): Medical care	<b>No</b>		
8(3) (c): Psychological counselling	<b>No</b>		
8(3) (d): Advice about their legal rights	<b>No</b>		
8(3) (e): Education, employment and training opportunities	<b>No</b>		
8(3) (f): Protection for the victim/survivors and his/her family from intimidation or retaliation	<b>Partial</b>	<i>The Crimes Ordinance 1961 –</i> - s34 Every person who intimidates another person with a view to compel them to do or to abstain from doing any act which he has a legal right to do or abstain from doing is guilty of an offence.	Provision only for the sanction of acts designed to intimidate child victims from pursuing their legal rights. No provision for the physical protection of them. In addition the protection available is not child specific.
8(4): Standards or guidelines exist for these programs and services	<b>No</b>		
8(5): The law requires that preference be given to promoting recovery and reintegration in families and communities (rather than institutional care).	<b>No</b>		Not specified in legislation.
8(6): The child's views are sought in relation to any recovery and reintegration processes.	<b>No</b>		

8(7): The law protects all child victims/survivors of exploitation from prosecution and involuntary detention.	<b>Partly</b>		The Crimes Ordinance does provide for a prohibition of prosecution of female child victims of sexual intercourse and indecency but there are no provisions specifically prohibiting the prosecution of child victims of commercial sexual exploitation, begging, international trafficking or illegal recruitment into armed groups.
8(8): Independent, child-friendly complaints tribunal for the investigation and resolution of complaints regarding discriminatory treatment etc. by child victims/survivors.	<b>Partly</b>	<i>The Komesina o Sulufaiga (Ombudsman) Act 1988 –</i> - Provides for an Ombudsman’s office to investigate any complaints by individuals in relation to treatment by listed public institutions. - s13 All complaints must be made in writing.	Investigation limited to specified public institutions, the service is not specified to cater for children. Nor is it set up in a child accessible way – for example, complaints must be in writing. There is a risk that children’s complaints in a non child specific service could be dismissed as frivolous.

<b>9 Children in conflict with the law CRC Article: 1, 2, 3, 4, 6, 12, 37 and 40</b>			
<b>Child protection indicator</b>	<b>Compliance</b>	<b>Relevant legislation</b>	<b>Comments</b>
9(1): Any special procedures and protections for children who are in conflict with the law, are available to all children under the age of 18.	<b>No????</b>	<i>Young Offenders Act 2007</i>  <i>Prisons and Corrections Bill 2011</i> <i>s. 2 A young prisoner is 18 or less</i>  <i>s. 27 Admission of young prisoners to be treated in accordance with Act and Commissioner’s Orders</i> <i>s. 28 Young prisoners to be separated from adults</i>  <i>s.39 Classification procedures to ensure special treatment of</i>	The Young Offenders Act 2007 does not apply to 17-year-olds.  The Young Offenders Act 2007 applies to persons of or over the age of 10 years and under the age of 17 years.

		<p><i>young prisoners</i></p> <p><i>s. 47 prison labour to be appropriate for the age of young prisoner</i></p> <p><i>s. 50 Early release and pre-release program to comply with CRC</i></p> <p><i>s. 60 Regulation and Commissioner's Orders to ensure right to education of young prisoner</i></p> <p><i>Correction and Corrections Regulation (currently being drafted)</i></p> <p><i>There are provisions for right of young prisoners during classification, transfer to separate prison and power of independent prison inspector to monitor</i></p>	
9(2): A minimum age of criminal responsibility has been established which is at least 12 (as per UN Committee on the Rights of the Child Comment). Children below this age required to be referred to the appropriate social services.	<b>Yes</b>	<p><i>Young Offenders Act 2007 –</i></p> <ul style="list-style-type: none"> <li>- s3 Despite any other law to the contrary, no person under the age of 10 years shall be charged with any criminal offence.</li> </ul>	Children under the age of 10 cannot be convicted of a crime.
9(3): Arrest is used only as a measure of last resort, for the shortest possible period of time and the law provides for a minimum age for arrest. Maximum period specified for detention of a child following arrest without a court hearing at which the detention can be challenged.	<b>Partly</b>	<p><i>The Constitution of the Independent State of Western Samoa Act 1960 –</i></p> <ul style="list-style-type: none"> <li>- s6(4) every person who is arrested must appear before Court within 24 hours of arrest.</li> </ul> <p><i>The Criminal Procedure Act 1972 –</i></p> <ul style="list-style-type: none"> <li>- s9 it is the duty of everyone arresting any other person to produce him before a remanding officer within 24 hours</li> </ul>	<p>Not specified that arrest of a child should be as a last resort.</p> <p>Maximum period of 24 hours is not child-specific.</p>



<p>9(5): Police are required to notify parents immediately upon the arrest of a child, and parents are entitled to be present during all investigative and trial proceedings, in accordance with the views of the child.</p>	<p><b>Partly</b></p>	<p><i>Young Offenders Act 2007 -</i></p> <ul style="list-style-type: none"> <li>- s. 9 A Young Person has the right to the attendance of his or her parent and/or caregiver or any member of his or her family at the hearing of proceedings where it is practical to do so.</li> <li>- s11(3) Any person may attend any pre-sentence meeting. May include any victim and members of the victim's family, the police, the probation service, village or church representatives, and members of the Young Person's family.</li> <li>- s18(c) [In relation to formal police warnings] the warning must be given in the presence of: (i) a parent or guardian or other person having the care of the Young Person; or (ii) if the Young Person's parent or guardian is not reasonably available an adult person nominated by the Young Person.</li> </ul> <p><i>Police Powers Act 2007 –</i></p> <ul style="list-style-type: none"> <li>- s22(2) Where a forensic procedure is carried out on a minor, wherever possible a relative of that minor shall be present during the carrying out of that forensic procedure.</li> </ul>	<p>Young Offenders Act entitles presence during pre-sentence meetings, and requires presence during the delivery of 'formal police warnings' but it is not specified whether police are required to notify parents immediately upon the arrest of a child.</p>
<p>9(6): Police are required to notify legal assistance immediately upon the arrest of a child and legal assistance is entitled to be present during all investigative and trial proceedings, in accordance with the views of the child.</p>	<p><b>Yes</b></p>	<p><i>Young Offenders Act 2007 -</i></p> <ul style="list-style-type: none"> <li>- s9 A Young Person is entitled to: (a) receive independent legal advice; and (c) apply for legal aid.</li> </ul> <p><i>The Constitution of the Independent State of Western Samoa Act 1960 –</i></p> <ul style="list-style-type: none"> <li>- s6(3) Every person who is arrested ... shall be allowed to consult a legal practitioner of his own choice without delay</li> <li>- s9(4) right to legal assistance of own choosing, to be given for free when the interests of justice so require</li> </ul> <p><i>The Criminal Procedure Act 1972 –</i></p> <ul style="list-style-type: none"> <li>- s9 it is the duty of everyone arresting any other person to</li> </ul>	

		<p>allow him to consult a legal practitioner of his own choice without delay</p> <ul style="list-style-type: none"> <li>- s41 Every defendant may defend the proceedings personally or be represented by a barrister or solicitor...</li> </ul>	
9(7): Police are obligated to have parents, legal guardians and/or a defence lawyer present whenever questioning a child.	<b>No</b>	<p><i>Young Offenders Act 2007</i> –</p> <ul style="list-style-type: none"> <li>- s9 A Young Person is entitled to: (b) the attendance of his or her parent and/or caregiver or any member of his or her family at the hearing of proceedings where it is practical to do so;</li> <li>- s18(c) [In relation to formal police warnings] the warning must be given in the presence of: (i) a parent or guardian or other person having the care of the Young Person; or (ii) if the Young Persons parent or guardian is not reasonably available an adult person nominated by the Young Person.</li> </ul>	Young Offenders Act specifies presence during 'hearing', and 'formal police warning' but does it is not clear that this also covers during police questioning.
9(8): Child has the right to be informed promptly and directly of any charges against him/her.	<b>Yes</b>	<p><i>The Constitution of the Independent State of Western Samoa Act 1960</i> –</p> <ul style="list-style-type: none"> <li>- s6(3) Every person who is arrested shall be informed promptly of the grounds of his arrest and of any charge against him...</li> <li>- s9(4)(a) right to be informed promptly and in detail of the nature and cause of the accusation against him</li> </ul> <p><i>The Criminal Procedure Act 1972</i> –</p> <ul style="list-style-type: none"> <li>- s9 It is the duty of every one arresting any other person to promptly inform the person arrested of the grounds of his arrest and any charges against him</li> </ul>	Not child specific
9(9): Children are guaranteed the right to be presumed innocent until proven guilty	<b>Yes</b>	<p><i>The Constitution of the Independent State of Western Samoa Act 1960</i> –</p> <ul style="list-style-type: none"> <li>- s9(3) Every person charged with an offence shall be presumed innocent until proved guilty according to law</li> </ul>	Not child specific
9(10): Children are guaranteed the right to remain silent and not be compelled to give	<b>Yes</b>	<p><i>The Constitution of the Independent State of Western Samoa Act 1960</i> –</p>	Not child specific

evidence or confess guilt.		<ul style="list-style-type: none"> <li>- s9(5) no person accused of any offence shall be compelled to be a witness against himself</li> </ul> <p><i>The Evidence Ordinance 1961 –</i></p> <ul style="list-style-type: none"> <li>- s10 no person shall be compelled to answer any question or to produce any document if he states as part of his evidence on oath in any judicial proceeding that the answer to such question or the production of such document may in his honest belief tend to expose him to the risk of criminal prosecution</li> </ul> <p><i>The Criminal Procedure Act 1972 –</i></p> <ul style="list-style-type: none"> <li>- s48(2) he may plead either guilty or not guilty...</li> </ul>	
9(11): Children are guaranteed the right to legal representation at all stages of the proceedings	<b>Yes</b>	<p><i>Young Offenders Act 2007 –</i></p> <ul style="list-style-type: none"> <li>- s9 A Young Person is entitled to: (a) receive independent legal advice; and (c) apply for legal aid.</li> </ul> <p><i>The Constitution of the Independent State of Western Samoa Act 1960 –</i></p> <ul style="list-style-type: none"> <li>- s6(3) Every person who is arrested ... shall be allowed to consult a legal practitioner of his own choice without delay</li> <li>- s9(4) right to legal assistance of own choosing, to be given for free when the interests of justice so require</li> </ul> <p><i>The Criminal Procedure Act 1972 –</i></p> <ul style="list-style-type: none"> <li>- s9 it is the duty of everyone arresting any other person to allow him to consult a legal practitioner of his own choice without delay</li> <li>- s41 Every defendant may defend the proceedings personally or be represented by a barrister or solicitor...</li> </ul>	
9(12): Explicit right to free assistance from an interpreter where necessary.	<b>Yes</b>	<p><i>Young Offenders Act 2007 –</i></p> <ul style="list-style-type: none"> <li>- s4(4) Where Samoan or English is not spoken by the Young Person an interpreter in the language spoken by the offender will, where practicable, be provided.</li> </ul>	

		<i>The Constitution of the Independent State of Western Samoa Act 1960 –</i> - s9(4)(e) right to free assistance of an interpreter	
9(13): Law requires that children detained in police custody have the right to challenge their detention before a competent authority.	<b>Yes</b>	<i>The Constitution of the Independent State of Western Samoa Act 1960 –</i> - s6(2) complaints re lawfulness of detention can be made to the Supreme Court	Not child specific
9(14): Children are guaranteed the right to have the matter determined by a competent authority without delay	<b>Yes</b>	Young Offenders Act 2007 - - s6(2) Where a Young Person pleads not guilty to any charge, the Court shall conduct a defended hearing as soon as practicable. - s6(3) 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.  <i>The Constitution of the Independent State of Western Samoa Act 1960 –</i> - s9 ... every person is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established under the law...	
9(15): The law gives police, prosecutors and judges a broad discretion to resolve child cases through diversion and these diversionary procedures are specified where appropriate (e.g. mediation, community conferencing).	<b>Yes</b>	Young Offenders Act 2007 - - s17 Powers of police to issue warnings. - s6(4) Where a Young Person admits any charge, the Court must direct the Probation Service to arrange a pre-sentence meeting. - s18 [Sets out procedure for 'formal police warning'] - s11. Pre-sentence meetings to take place where Court directs - 12. Purpose of pre-sentence meetings-(1) Any pre-sentence meeting must: (a) discuss the circumstances of the offending; and (b) seek the views of those in attendance; and (c) consider whether a reconciliation or	Under Section 20 of the Young Offenders Act 2007, the Commissioner of Police may, by written notice within 12 months, cancel the warning or formal police warning, whereupon the Young Person may be charged with the offence for which the warning or formal police warning was given.

		<p>other outcome may be arrived at by the parties affected.</p> <p>(2) In this section, an outcome may include payment to any victims for reparation, property loss, medical expenses incurred or any other reasonable loss suffered by the victim as a result of the Young Person's actions.</p> <p><b>Community Justice Act 2008 –</b> - s11 allows for diversion by the Court.</p>	
9(16): The law requires the consent of the child and/or the child's parents for diversion procedures to be applied.	<b>Partly</b>	<p><i>Community Justice Act 2008 –</i> - 11(3) The diversion agreement will be signed by the probation officer and the person charged.</p>	This applies only to diversion under the Community Justice Act (for 17-year-olds and adults). No such provision is specified in the Young Offenders Act 2007 for 10-16 year-olds.
9(17): The use and duration of pre-trial detention against children is limited, explicitly a measure of last resort and there are alternative measures in place for supervising children accused pending trial.	<b>Partly</b>	<p><i>Young Offenders Act 2007 -</i> - 22(2) Where a Young Person is remanded in custody, the Young Person must be remanded to a residential youth facility, or if none exists, to a prison or place of residence as may be directed by the Court where it is practical to do so. - 22(4) A Young Person may be remanded on bail on one or more [...] conditions.</p> <p><i>The Criminal Procedure Act 1972 –</i> - s72 Where any court remands for the period of any adjournment any defendant under the age of 18 years, the defendant may be remanded in the custody of a Child Welfare Officer or of a probation officer or senior member of the police stationed in the vicinity of the Court or of any reputable adult person unless no other course is desirable, having regard to all the circumstances.</p>	Young Offenders Act allows for diversion, and release on conditional bail, but pre-trial detention is not explicitly limited or designated as a last resort. Section 22(2) allows for a child to be remanded in a 'place or residence' rather than a residential youth facility or prison.
9(18): Children detained pre trial to be separated from convicted children.	<b>No</b>	<p><i>Prisons and Corrections Bill 2011</i> This is addressed under section 28 which provides for the separation of young prisoners and unconvicted prisoners this to be done in accordance with Commissioners Orders.</p>	

<p>9(19): Laws/policy require that all children's cases are tried by a specialized court (or a specially designated judge) separate from adult court proceedings.</p>	<p><b>Partly</b></p>	<p><i>Young Offenders Act 2007</i> –</p> <ul style="list-style-type: none"> <li>- s4(1) There will be a division of the District Court to be called the “Youth Court” which will be presided over by District Court Judges.</li> <li>- 6(5) The Court may transfer a Young Person to the Supreme Court, if in the opinion of the presiding Judge, the offence is of such seriousness and the circumstances of the Young Person are such that such Young Person should be treated as an adult.</li> <li>- 6(6) The Court may transfer a Young Person to the Supreme Court for sentence, if in the opinion of the presiding Judge, the offence is of such seriousness and the circumstances of the Young Person are such that such Young Person should be sentenced as an adult.</li> <li>- 6(7) The Court, where a Young Person has been jointly charged with an adult and enters a plea of not guilty, may, if it is in the interest of justice to do so, transfer the Young Person for hearing to the same Court as where the co-offender is being tried.</li> </ul>	<p>Youth Court has jurisdiction to deal with all criminal cases involving children aged 10-17 except for murder cases which are dealt with by the Supreme Court. (YOA 5(3)). However, the Judge has discretion to transfer any case to the Supreme Court for either hearing and/or sentencing ‘as an adult’ based on the seriousness of the offence and the circumstances of the child. Also, a child who has been jointly charged with an adult may be transferred to the same court as the adult co-offender.</p>
<p>9(20): All court proceedings involving offenders under 18 required to occur in a closed court.</p>	<p><b>Partly</b></p>	<p><i>Young Offenders Act 2007</i> –</p> <ul style="list-style-type: none"> <li>- s8(1) Unless the Court determines otherwise, any proceedings conducted in the Youth Court will be closed to the general public and to the Media.</li> </ul> <p><i>The Constitution of the Independent State of Western Samoa Act 1960</i> –</p> <ul style="list-style-type: none"> <li>- s9(1) ...but the public and representatives of the news service may be excluded from all or part of the trial ...where the interests of juveniles or the protection of the private life of the parties so require...</li> </ul>	<p>This is not a blanket provision.</p>

<p>9(21): Publication of the name or any information leading to the identification of a child offender strictly prohibited.</p>	<p><b>Partly</b></p>	<p><i>Young Offenders Act 2007 –</i></p> <ul style="list-style-type: none"> <li>- s8(2) Unless the Court is of the opinion that the public interest requires it, the name and identifying details of a Young Person may not be published by the Media or any other person.</li> <li>- s8(4) Any person, media person, media organization, media office or media authority, who publishes or causes to publish any information or publication prohibited by this section commits an offence and shall be liable upon conviction to a fine not exceeding 100 penalty units.</li> </ul> <p><i>The Constitution of the Independent State of Western Samoa Act 1960 –</i></p> <ul style="list-style-type: none"> <li>- s9(1) ...but the public and representatives of the news service may be excluded from all or part of the trial ...where the interests of juveniles or the protection of the private life of the parties so require...</li> </ul> <p><i>The Criminal Procedure Act 1972 –</i></p> <ul style="list-style-type: none"> <li>- s61 Court may exclude the public and representatives of news services from all or part of the trial and prohibit the publication of the name, or of any particulars likely to lead to the identification of, any person connected with the trial.</li> </ul>	<p>Court is empowered to prohibit publication but there is no blanket prohibition on media identification of children involved in legal proceedings</p>
<p>9(22): The law requires that children’s cases are expedited.</p>	<p><b>Partly</b></p>	<p><i>Young Offenders Act 2007 -</i></p> <ul style="list-style-type: none"> <li>- s6(2) Where a Young Person pleads not guilty to any charge, the Court shall conduct a defended hearing as soon as practicable.</li> <li>- s6(3) 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.</li> </ul>	<p><i>Young Offenders Act</i> provides for a hearing ‘as soon as practicable’, and the Judge has discretion to dismiss charges if a hearing has been ‘unreasonably delayed’, but no specific period of time is defined.</p>
<p>9(23): Courts are empowered to compel the child’s parents to be present at any/all stages of proceedings.</p>	<p><b>Yes</b></p>	<p><i>Young Offenders Act 2007 -</i></p> <ul style="list-style-type: none"> <li>- s7(1) The Court may issue a summons requiring the parents, parent or guardian of a Young Person to appear</li> </ul>	

		<p>before the Court and may ask any questions of the parent or parents or guardian and may require such questions to be answered under oath.</p> <ul style="list-style-type: none"> <li>- s7(2) If a parent or guardian fails to appear before the Youth Court when summoned to do so, the Court may issue a warrant of arrest to bring the parent or guardian before the Court, such warrant to be executed by a Police Officer.</li> </ul>	
9(24): Criminal procedure laws include special rules of procedures for conducting children's trials to ensure that they are conducted in an atmosphere of understanding, which allows the child to participate fully.	<b>Yes</b>	<p><i>Young Offenders Act 2007</i> –</p> <ul style="list-style-type: none"> <li>- s6(1) The Youth Court must apply the criminal standard of proof in the conduct of the business before it, but may otherwise determine its own procedure, provided however, in defended hearings the Court shall adopt the rules of criminal procedure.</li> </ul>	Young Offenders Act allows for flexibility in procedure, although this would not apply to 17-year-olds.
9(25): Right to obtain witnesses under equal conditions to prosecution.	<b>Yes</b>	<p><i>The Constitution of the Independent State of Western Samoa Act 1960</i> –</p> <ul style="list-style-type: none"> <li>- s9(4)(d) right to obtain witnesses under the same conditions as witnesses against him</li> </ul> <p><i>The Criminal Procedure Act 1972</i> –</p> <ul style="list-style-type: none"> <li>- s63 – 67 dealing with witnesses apply equally to defence and prosecution witnesses</li> </ul>	Not child specific
9(26): Explicit right to be present and to participate in any hearing or court process affecting the child (formal or informal).	<b>Yes</b>	<p><i>The Criminal Procedure Act 1972</i> –</p> <ul style="list-style-type: none"> <li>- s41 Every defendant shall be entitled to be present in Court during the whole of his trial...</li> </ul>	
9(27): Explicit right to appeal to competent, independent and impartial authority.	<b>Yes</b>	<p><i>Young Offenders Act 2007</i> –</p> <ul style="list-style-type: none"> <li>- s24(1) Any Young Person convicted or sentenced in the District Court may appeal to the Supreme Court against his or her conviction and/or sentence. (2) Any Young Person convicted or sentenced at the Supreme Court may appeal to the Court of Appeal against his or her conviction and/or sentence.</li> </ul>	

		<p><i>The Criminal Procedure Act 1972 –</i></p> <ul style="list-style-type: none"> <li>- s107(2) Where any person has been tried in any lower Court for any offence and has been acquitted or convicted or had an order made against him by that Court, either the prosecutor or the defendant may apply in writing to the upper Court for a retrial</li> </ul> <p><i>The Village Fono Act 1990 –</i></p> <ul style="list-style-type: none"> <li>- s11 right of appeal by any individual to the Court against any Fono decision adversely affecting them</li> </ul>	
<p>9(28): The law requires that any penalties imposed are based on the best interests of the child and aim at rehabilitation rather than punishment, with an explicit emphasis in drug and substance offences</p>	<p><b>Partly</b></p>	<p><i>Young Offenders Act 2007 –</i></p> <ul style="list-style-type: none"> <li>- s12 Sets out guidelines for pre-sentence meetings which are consistent with principles for restorative justice.</li> <li>- s13. Any outcome determined at a pre-sentence meeting shall have regard to the following principles: (a) the accountability by the Young Person for the wrong that has been done; and (b) the rehabilitation of the Young Person including an assessment of the suitability of his or her current living arrangements; and (c) the involvement of the Young Person's family, church, chief, and village; and (d) the protection of the community; and (e) an acknowledgement of the views of the victim and to restoring the position of the victim in accordance with Samoan custom and tradition; (f) the putting in place of a plan for rehabilitation of the Young Person that fosters responsibility by the Young Person and which promotes the Young Person's self-esteem, cultural awareness and understanding.</li> </ul> <p><i>Community Justice Act 2008 –</i></p> <ul style="list-style-type: none"> <li>- s3 Objects of Act: (c) to ensure offenders undertaking sentences of supervision have access to rehabilitative and reintegration programmes; and (e) to ensure offenders</li> </ul>	<p>Community Justice Act 2008 is relevant for 17-year-old children who are not covered under the Young Offenders Act 2007.</p> <p>No interventions specified in legislation other than criminal interventions and government supply of drugs to incurably addicted.</p>

		released on parole have access to rehabilitative and reintegration programmes; and (f) for offenders as far as is reasonable and practicable in the circumstances and within the resources available, to be given access to activities that may contribute to their rehabilitation and reintegration into the community;	
9(29): The law requires that any penalties imposed are proportionate to the gravity of the offence and also the circumstances and needs of the child.	<b>Yes</b>	<p><i>Young Offenders Act 2007</i> –</p> <ul style="list-style-type: none"> <li>- s10 Probation Service responsible for (c) providing a report to the Court with a recommendation on the type and detail of any contemplated sentence.</li> <li>- s12(1) Any pre-sentence meeting must: (a) discuss the circumstances of the offending; and (b) seek the views of those in attendance; and (c) consider whether a reconciliation or other outcome may be arrived at by the parties affected.</li> <li>- s17(1) Police Officer shall consider whether it would be sufficient to warn the Young Person, unless a warning is inappropriate having regard to the seriousness of the offence, the nature and number of previous offences committed by the Young Person and the views of the victim.</li> <li>- s18(1) Allows for more serious ‘formal police warning’.</li> </ul>	
9(30): Pre-sentence or social inquiry reports are prepared and considered prior to imposing sentence on a child.	<b>Yes</b>	<p><i>Young Offenders Act 2007</i> –</p> <ul style="list-style-type: none"> <li>- s6(4) Where a Young Person admits any charge, the Court must direct the Probation Service to arrange a pre-sentence meeting [...]</li> <li>- s10 At the hearing, the Probation Service will be responsible for : (a) convening and reporting on any pre-sentence meeting that takes place for the purposes of any proceedings which come before the Court; and (c) providing a report to the Court with a re-commendation on the type and detail of any contemplated sentence;</li> <li>- s11(1) Where a Young Person acknowledges committing an offence or where a Court has found that an offence has</li> </ul>	

		<p>been proved against a Young Person, the Court may direct the Probation Service to arrange for a pre-sentence meeting, which must be held not later than 31 days after the date of the Court's direction to the Probation Service.</p> <p>- <i>Community Justice Act 2008</i> -</p> <p>- s6(2) A Court may order a pre-sentence report if it considers that this would assist it in making a determination under this section and such report may include a recommendation that the offender be diverted in accordance with section 11 on such conditions as it thinks fit. [elaborated in s10]</p>	
<p>9(31): Deprivation of liberty is imposed only as a measure of last resort, against children who commit serious crimes of violence or persist in committing other serious offences.</p>	<p><b>Yes</b></p>	<p><i>Young Offenders Act 2007</i> –</p> <p>- s15(2) Where the Court is of the opinion that the Young Person has failed to carry out obligations under [alternatives to detention] within 6 months it may convict and sentence the Young Person. (3) Where the Court is of the opinion that a conviction and sentence is required in the interests of justice after having given due consideration to all the circumstances of the offence it may convict and sentence the Young Person.[which includes]</p> <p>- s16(f) impose a term of imprisonment, to be served in a youth residential facility or if such facility is not available a prison, provided however, the Court must only impose a custodial sentence as a last resort and in circumstances where there is no reasonable alternative.</p> <p><i>The Criminal Procedure Act 1972</i> –</p> <p>- s112 Where under any enactment a Court may sentence any person to imprisonment, or to imprisonment or to a fine, that Court may sentence that person to pay a fine in addition to or instead of sentencing him to imprisonment, unless there is express provision to the contrary in that enactment</p>	<p>Default position is for Judges to <i>first</i> consider diversion and alternatives.</p>

		<p><i>The Offenders Probation Act 1971 –</i></p> <ul style="list-style-type: none"> <li>- s7 Where any person is convicted of any offence punishable by imprisonment the Court may in its discretion, instead of sentencing him to imprisonment, release him on probation for a period specified by the Court</li> </ul>	
9(32): Judges are given broad discretion to tailor the sentence to the individual child	<b>Yes</b>	<p><i>Young Offenders Act 2007 -</i></p> <ul style="list-style-type: none"> <li>- s15(1) Sentencing options include: without entering a conviction, order the Young Person within 6 months to: (a) carry out obligations under any agreement reached at a pre-sentence meeting; or (b) community work of not more than 100 hours, to be completed within 6 months; or (c) undertake a needs assessment and/or rehabilitative programme of not more than 6 months.</li> <li>- S16 [Only if s15 has not been satisfactorily completed, or the circumstances are such as to merit it, sentences include]:(a) convict and discharge the Young Person; or (b) order the Young Person to come up for sentence if called upon within 12 months; or (c) impose a fine; or (d) undertake community work; or (e) undertake a sentence of supervision; or (f) impose a term of imprisonment, to be served in a youth residential facility or if such facility is not available a prison, provided however, the Court must only impose a custodial sentence as a last resort and in circumstances where there is no reasonable alternative.</li> </ul>	
9(33): A wide range of alternative, community-based dispositions are available (including probation; care, guidance and supervision orders; diversion to mental health treatment, counselling; victim/survivor reparation and restitution, community service work opportunities; education and vocational training, living arrangement orders etc.).	<b>Yes</b>	<p><i>Young Offenders Act 2007 -</i></p> <ul style="list-style-type: none"> <li>- s12(2) an outcome from a pre-sentence meeting may include payment to any victims for reparation, property loss, medical expenses incurred or any other reasonable loss suffered by the victim as a result of the Young Person's actions.</li> <li>- s15(1) [...] Court may without entering a conviction, order the Young Person within 6 months to: (a) carry out his or</li> </ul>	<p>Although it is not explicitly stated, it is assumed that the provisions of the Mental Health Act 2007 will be invoked in cases where suspected young offenders experience mental disorders. This would include the provisions on 'voluntary care, support and treatment within family and community' (Part 2), Involuntary Initial</p>

	<p>her obligations under any agreement reached at a pre-sentence meeting; or (b) undertake a term of community work of not more than 100 hours, to be completed within 6 months; or (c) undertake a needs assessment and/or rehabilitative programme of not more than 6 months duration.</p> <ul style="list-style-type: none"> <li>- 16(a) convict and discharge the Young Person; or (b) order the Young Person to come up for sentence if called upon within 12 months; or (c) impose a fine on the Young Person; or (d) order that the Young Person undertake a sentence of community work; or (e) order the Young Person to undertake a sentence of supervision; or (f) impose a term of imprisonment, to be served in a youth residential facility or if such facility is not available a prison, provided however, the Court must only impose a custodial sentence as a last resort and in circumstances where there is no reasonable alternative.</li> </ul> <p><i>Community Justice Act 2008 –</i></p> <ul style="list-style-type: none"> <li>- s8 Community Work can be substituted for a fine at the court’s discretion.</li> <li>- s9 Community Work or Supervision can be substituted for imprisonment at the court’s discretion.</li> </ul> <p><i>The Criminal Procedure Act 1972 –</i></p> <ul style="list-style-type: none"> <li>- s112 Where under any enactment a Court may sentence any person to imprisonment, or to imprisonment or to a fine, that Court may sentence that person to pay a fine in addition to or instead of sentencing him to imprisonment, unless there is express provision to the contrary in that enactment</li> </ul> <p><i>The Offenders Probation Act 1971 –</i></p> <ul style="list-style-type: none"> <li>- s7 Where any person is convicted of any offence</li> </ul>	<p>Assessment (Part 3), Community Treatment Order (Part 4), Inpatient Treatment Order (Part 5).</p>
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		punishable by imprisonment the Court may in its discretion, instead of sentencing him to imprisonment, release him on probation for a period specified by the Court	
9(34): A responsible authority (e.g. probation, community-based corrections, or social welfare agency) has been designated responsible for promoting, regulating and monitoring community-based programmes		<p><i>Young Offenders Act 2007</i> -</p> <ul style="list-style-type: none"> <li>- s10. At the hearing of any proceedings in the Youth Court, the Probation Service will be responsible for : (b) monitoring the performance of any agreement by parties to a pre-sentence meeting where an agreement results from the meeting; and (d) for monitoring any agreement reached at a pre-sentence meeting, supervision, community work sentence or diversion that may be imposed on a Young Person; and (e) ensuring that any sentence or requirement of a Young Person is implemented effectively.</li> </ul> <p><i>Community Justice Act 2008</i> –</p> <ul style="list-style-type: none"> <li>- s11(6) A probation officer will supervise the diversion agreement and report back to the Court at either the completion of the diversion agreement or advise of the failure of the person charged to comply.</li> <li>- Supervision (s15) and Community Work (s27) are also monitored and supervised by a Probation Officer or a designated Community Justice Supervisor. See also role of Probation Officers (s38(a) &amp; 40) and s41 &amp; s42 in relation to Community Justice Supervisors.</li> </ul>	
9(35): Life imprisonment, capital punishment and indeterminate sentences are not imposed on children.	<b>Partly</b>	<i>Crimes (Abolition of Death Penalty) Amendment Act 2005</i>	<p>All provisions in legislation for the death penalty removed in 2005.</p> <p>However, there is no prohibition on life imprisonment or indeterminate sentences.</p>
9(36): Prohibition on torture and all other cruel, inhuman or degrading punishments or	<b>Yes</b>	<i>The Constitution of the Independent State of Western Samoa Act 1961</i> –	Not child specific

treatment.		- s7 No person shall be subjected to torture or to inhuman or degrading treatment or punishment	<i>Prisons and Corrections Bill 2011</i>  s. 44 Restriction on the use of Force and provision of training  s. 46 Restriction of Instruments of Restraints (not child specific)
9(37): Children are separated from adults in all places of detention, including police custody, pre-trial detention centres and prisons.	<b>Partly</b>	<i>Young Offenders Act 2007</i> - - s16(2) Where the Court imposes a sentence of 'term of imprisonment' and the sentence is to be served in a prison, the Young Person must be kept separate from adult prisoners. - s22(3) Where a Young Person remanded in custody is held in a prison, the Young Person must be kept separate from adult prisoners.	Yung Offenders Act specifies separation in prison (pre- or post-trial), but no mention of police custody.
9(38): Special facilities have been established for the detention of children, including open-custody and small-scale centres designed to promote rehabilitation and reintegration.	<b>Yes</b>		Olomanu. (designated as a Corrections facility under the <i>Prisons and Corrections Bill 2011</i> )
9(39): Explicit right to family contact, visitors and correspondence while imprisoned with restrictions to these rights limited to exceptional circumstances.	<b>Partly</b>	<i>Prisons Regulations 1954</i> - - Prisoners whose conduct or industry has been unsatisfactory shall have their writing and visiting privileges curtailed at the discretion of the Chief Gaoler or Gaoler, as the case may be. - Reg 154 If in the opinion of the Chief Gaoler or Gaoler more frequent visits and correspondence are likely to assist in the reformation or improvement of any prisoner, he may grant such additional privileges in this direction as he may deem fit. - Reg 155 The Chief Gaoler or Gaoler is empowered to	There is no specific right to visitors and contact with family specified in legislation. However, the regulations indicate that visitors and contact with family are permitted unless withdrawn as a punitive measure.

		<p>extend at his discretion the time to be allowed to relatives who have journeyed from a distance to see prisoners.</p> <p>- Reg 156 No prisoner shall receive a visit from more than one person at a time except when the visitors are in the relationship of parent, wife, husband, or children of the prisoner.</p> <p><i>Prisons and Corrections Bill 2011</i></p> <p>- Will be in Commissions Orders</p>	
9(40): Explicit right to access to education and training suited to child's needs and abilities.	<b>No</b>	<p><i>Prisons and Corrections Bill 2011</i></p> <p>s. 60 <i>Right to Education will be provided for in Commissioners Orders</i></p>	
9(41): Law/policy requires that while in detention children receive care, protection and all necessary individual assistance – social, educational, vocational, psychological, medical and physical – that they may require in view of their age, sex and personality, in the interests of their wholesome development.	<b>No</b>	<p><i>Prisons and Corrections Bill 2011</i></p> <p>s. 27 <i>Admission of young prisoners to be treated in accordance with Act and Commissioner's Orders</i></p> <p>s. 28 <i>Young prisoners to be separated from adults</i></p> <p>s.39 <i>Classification procedures to ensure special treatment of young prisoners</i></p> <p>s. 47 <i>prison labour to be appropriate for the age of young prisoner</i></p> <p>s. 50 <i>Early release and pre-release program to comply with CRC</i></p> <p>s. 60 <i>Regulation and Commissioner's Orders to ensure right to education of young prisoner</i></p> <p><i>Correction and Corrections Regulation (currently being</i></p>	

		<p><i>drafted)</i></p> <p><i>There are provisions for right of young prisoners during classification, transfer to separate prison and power of independent prison inspector to monitor</i></p>	
9(42): Disciplinary procedures within detention centres are strictly regulated	?	<p><i>Prisons and Corrections Bill 2011</i></p> <p>s.3 The guiding Principles when interpreting or applying any provision of the proposed Act, and when exercising any prescribed power, duty or function, all persons includes to the fullest extent possible the rights and obligations of CEDAW and CRC in the administration of Samoa's prisons and the treatment of prisoners</p> <p>s.60 Regulations and Commissioners Orders will be used to setout disciplinary procedures within detention centre (currently being drafted)</p>	
...and the following are specifically prohibited: 9(42) (a): Corporal punishment	?	<p><i>Prisons and Corrections Bill 2011</i></p> <p>s.3 The guiding principles when interpreting or applying any provision of the proposed Act, and when exercising any prescribed power, duty or function, all persons also includes to the fullest extent possible <i>The Standard Minimum Rules for the Treatment of Prisoners</i> adopted at Geneva in 1955 which prohibits punishment by placing in a dark cell, and all cruel, inhuman or degrading punishments shall be completely prohibited as punishments for disciplinary offences under Article 31.</p> <p>s. 44 Restriction on the Use of Force and Training</p> <p>s. 46 Restriction on the use of instruments of restrains</p>	

		These are being addressed under relevant Regulations and Commissioners Orders as per s.60.	
9(42) (b): Solitary confinement	<b>No</b>	<p><i>The Criminal Procedure Act 1972 –</i> - No offender shall be sentenced to solitary confinement</p> <p><i>The Prisons Act 1967</i> - s31The Commission may inflict on any prisoner the punishment of solitary confinement for a specified time not longer than 6 days or, in the case of aggravated offences, not longer than 30 days</p> <p><i>Prisons and Corrections Bill 2011</i> s.3 The guiding principles when interpreting or applying any provision of the proposed Act, and when exercising any prescribed power, duty or function, all persons also includes to the fullest extent possible <i>The Standard Minimum Rules for the Treatment of Prisoners</i> adopted at Geneva in 1955 which prohibits punishment by placing in a dark cell, and all cruel, inhuman or degrading punishments shall be completely prohibited as punishments for disciplinary offences under Article 31.</p> <p>These are being addressed under relevant Regulations and Commissioners Orders as per s.60.</p>	Although the Constitution prohibits solitary confinement as a sentence for any individual, it is explicitly permitted as a punishment in prisons.
9(42) (c): Placement in a dark cell	<b>No</b>	<p><i>Prisons and Corrections Bill 2011</i> s.3 <i>The guiding principles when interpreting or applying any provision of the proposed Act, and when exercising any prescribed power, duty or function, all persons also includes to the fullest extent possible The Standard Minimum Rules for the Treatment of Prisoners adopted at Geneva in 1955 which prohibits punishment by placing in a dark cell, and all</i></p>	

		<p><i>cruel, inhuman or degrading punishments shall be completely prohibited as punishments for disciplinary offences under Article 31.</i></p> <p><i>These are being addressed under relevant Regulations and Commissioners Orders as per s.60.</i></p>	
9(42) (d): Reduction of diet	<b>No</b>	<p><i>Prisons and Corrections Bill 2011</i></p> <p><i>s.3 The guiding principles when interpreting or applying any provision of the proposed Act, and when exercising any prescribed power, duty or function, all persons also includes to the fullest extent possible The Standard Minimum Rules for the Treatment of Prisoners adopted at Geneva in 1955 which is provided for under Article 32.</i></p> <p><i>s. 33 Diet and food rations to be restricted and cannot be withdrawn as punishment</i></p> <p><i>These are being addressed under relevant Regulations and Commissioners Orders as per s.60.</i></p>	
9(42) (e): Denial of contact with family members	<b>No</b>	<p><i>Prisons and Corrections Bill 2011</i></p> <p><i>s.3 The guiding principles when interpreting or applying any provision of the proposed Act, and when exercising any prescribed power, duty or function, all persons also includes to the fullest extent possible The Standard Minimum Rules for the Treatment of Prisoners adopted at Geneva in 1955 which is provided for under Article 37.</i></p> <p><i>These are being addressed under relevant Regulations and Commissioners Orders as per s.60.</i></p>	Not specified in legislation
9(42) (f): Any other punishment that may compromise the physical or mental health of	<b>Partly</b>	<i>The Constitution of the Independent State of Western Samoa Act 1961 –</i>	Not child specific

the child concerned		<p>- s7 No person shall be subjected to torture or to inhuman or degrading treatment or punishment</p> <p>-</p> <p><i>Prisons and Corrections Bill 2011</i></p> <p>s.3 The guiding principles when interpreting or applying any provision of the proposed Act, and when exercising any prescribed power, duty or function, all persons also includes to the fullest extent possible <i>The Standard Minimum Rules for the Treatment of Prisoners</i> adopted at Geneva in 1955 which is provided for under Article 32(2).</p> <p>These are being addressed under relevant Regulations and Commissioners Orders as per s.60.</p>	
9(43): There is an effective system for inspection and monitoring of all institutions in which children may be deprived of their liberty.	<b>No</b>	<p><i>Prisons and Corrections Bill 2011</i></p> <p><i>s. 20 Independent Prisons' Inspector</i></p> <p><i>Prisons and Corrections Regulations (currently being drafted) - being drafted provide for their role to inspect treatment and rights of young prisoners</i></p>	
9(44): The law requires that children deprived of liberty be subject to a periodic review of their situation.	<b>Partly</b>	<p><i>Mental Health Act 2007 –</i></p> <p>- s11(2) A Community Treatment Order may be issued for maximum of 12 months and, prior to the expiry and following a further assessment, may be renewed for a further period or periods not exceeding 12 months. (5) shall be revoked where: (a) the person subject to the order has been examined; and (b) the mental health care professional believes that the person no longer meets the criteria.</p> <p>- s14(2) An Inpatient Treatment Order may be issued for a maximum of 6 weeks and, prior to the expiry and, following a further examination, may be renewed for a further period or periods not exceeding 6 weeks. (4) ...following an assessment, a mental health care</p>	<p>Provision only in relation to restriction of liberty on the basis of mental health. Some review of criminal detention but not permissible prior to expiry of specified portion of sentence.</p> <p><i>Prisons and Corrections Regulations (currently being drafted)- provide for the review of classification of prisoners every 4 months +regular inspection by independent prisons inspector</i></p>

		<p>professional may vary the duration, terms and conditions of the Inpatient Treatment Order. (5) ... shall be revoked where: (a) the person subject to the order has been examined and (b) the mental health care professional believes that the person no longer meets the criteria.</p> <p>- s20(1) &amp; s21(1) A person subject to a Community or Inpatient Treatment Order, or any other person who satisfies the Court that they have a proper interest in the matter, may, with the leave of the Court, apply during the currency of the order to the Court to review the order.</p> <p><i>The Prisons Parole Board Act 1977-</i></p> <p>- s10 Every offender shall be eligible for consideration by the Board for release on parole upon the expiry of specified periods from the date of his reception in a prison</p>	
9(45): The Standard Minimum Rules for prisoners explicitly apply to children in detention, with regulations/policy addressing at least the following: (a): Register; (b): Hygiene; (c): Clothing & bedding; (d): Food; (e): Exercise & sport; (f): Medical services; (g): Discipline and punishment; (h): Instruments of restraint; (i): Complaints; (j): Contact; (k): Books; (l): Religion; (m): Prisoner property; (n): Death, illness, transfer; (o): Institutional personnel; (p): Privileges systems; (q): Work;(r): Education and recreation	<b>No</b>	<i>Adopted by the Prisons and Corrections Bill 2011 and reflected in relevant Regulationa and Commissioners Orders</i>	No rules applied specifically for children.
9(46): Children released from detention are provided with support for their reintegration into the community. An authority has been designated responsible for child reintegration, and programmes are in place to assist children who are released from	<b>No</b>	<i>Prisons and Corrections Bill 2011 s. 54 support for prisoners after release This is to be addressed also in Commissioners Orders as per s. 60 Prisons and Corrections Bill 2011</i>	

detention.			
9(47): Police, prosecutors, courts and prison officials are required to have specialised units, or designated specialists, to handle children in conflict with the law.	<b>Partly</b>	<i>Young Offenders Act 2007 –</i> - s4(1) There will be a division of the District Court to be called the “Youth Court” which will be presided over by District Court Judges.	
9(48): The law requires that the needs of disabled children are catered to at all stages of the legal process	<b>No</b>	<i>Mental Health Act 2007 –</i> - s3 ...objectives and principles: (a) to ensure that persons with a mental disorder receive the best possible care, support and, where required, treatment and protection; (c) to minimise the restrictions upon the liberty of persons with a mental disorder and interference in their rights, dignity and self-respect, so far as is consistent with their proper care, support, treatment and protection and the protection of other persons; (i) to eliminate discrimination against, and abuse, mistreatment and neglect of persons with a mental disorder;	Although it is not explicitly stated, it is assumed that the provisions of the Mental Health Act 2007 (not child-specific) will be invoked in cases where suspected young offenders experience mental disorders. This would include the provisions on ‘voluntary care, support and treatment within family and community’ (Part 2), Involuntary Initial Assessment (Part 3), Community Treatment Order (Part 4), Inpatient Treatment Order (Part 5).  There is no mention of children with physical disabilities nor any mention of children with any disability specifically in relation to young offenders.
9(49): All justice sector officials, including police, prosecutors, judges, lawyers and prison officials are required to receive training and sensitization on children in contact with the law as part of their induction training (at police academies, law schools, judicial training programmes, etc.), as well as on an in-service basis.	<b>No</b>	<i>This is to be addressed also in Commissioners Orders as per s. 60 Prisons and Corrections Bill 2011</i>	

<p>9(50): All children in conflict with the law have access to effective complaints procedures concerning all aspects of their treatment.</p>	<p><b>Partly</b></p>	<p><i>The Komesina o Sulufaiga (Ombudsman) Act 1988 –</i></p> <ul style="list-style-type: none"> <li>- Provides for an Ombudsman’s office to investigate any complaints by individuals in relation to treatment by listed public institutions.</li> <li>- s13 All complaints must be made in writing.</li> </ul> <p><i>The Prisons Act 1967 –</i></p> <ul style="list-style-type: none"> <li>- s27 Visiting committee appointed by the Head of State may hear prisoner complaints and report them to the Commissioner of the Head of State. Complaints to be heard in the presence of the Superintendent</li> </ul> <p><i>Prisons and Corrections Bill 2011</i> -Also addressed under Part IV of the Bill</p> <p><i>Prisons and Corrections Regulations (currently being drafted) provides for the powers of independent Prisons inspector and Visiting Justices</i></p>	<p>Investigation limited to specified public institutions, the service is not specified to cater for children. Nor is it set up in a child accessible way – for example, complaints must be in writing. There is a risk that children’s complaints in a non-child-specific service could be dismissed as frivolous.</p> <p>Although there is some provision for complaint to a “visiting committee”, the requirement that any complaints be made in the presence of the Superintendent limits the effectiveness of this as a genuine complaints avenue.</p>
<p>9(51): Mechanisms are required to be in place to monitor the treatment of children in conflict with the law, and to appropriately sanction justice sector officials who violate children’s rights.</p>	<p><b>Partly</b></p>	<p><i>Police Service Act 2009 –</i></p> <ul style="list-style-type: none"> <li>- Part V outlines ‘Disciplinary Procedures’ for ‘poor work performance’ and ‘breach of duty’(conduct amounting to the latter includes, amongst other things: 50(2)(f) acts in an insubordinate manner, sexually harasses, or displays any disrespect to a member of the Service or any member of the public);</li> <li>- Part VII outlines the role of the Professional Standards Unit of the Samoa Police Service (reviewed by the office of the Ombudsman), empowered to receive and investigate complaints.</li> </ul>	<p>Not child specific</p>
<p>9(52): All processes defined in legislation have the best interests of the child (including the maximum development of the child) specified as the primary consideration.</p>	<p><b>Partly</b></p>	<p><i>Young Offenders Act 2007 –</i></p> <ul style="list-style-type: none"> <li>- s21 Where, in respect of any alleged offence for which a warning or formal police warning is given to a Young Person under section 17 or section 18: (a) no information relating to that warning or that formal police warning shall</li> </ul>	<p>The ‘best interests’ principle is not explicitly referenced, but the Young Offenders Act specifies treatment and incorporates a number of measures which imply this approach, e.g. diversion,</p>

		<p>be disclosed in any criminal proceedings against that Young Person; and (b) no evidence of that offence shall be admissible, on behalf of the prosecution, in any criminal proceedings against that Young Person for any other offence.</p> <p><i>Prisons and Corrections Bill 2011</i> - s. 3 Guiding principles</p>	<p>pre-sentence meetings, alternatives to detention, due process rights and the inadmissibility of police warnings and formal warnings in subsequent criminal proceedings. Likewise, the Community Justice Act (relevant for 17 year-olds) allows for diversion and community-based alternative sentences.</p>
No 9(53): Law/policy requires the recording and reporting of systematic disaggregated data by all institutions dealing with child offenders.	<b>No</b>		
9(54): Legal recognition of informal customary law processes.	<b>Yes</b>	<p><i>Young Offenders Act 2007</i> –</p> <ul style="list-style-type: none"> <li>- s4(2) Proceedings in the Youth Court, where determined appropriate by the Court, may be conducted in a manner consistent with Samoan custom and tradition.</li> <li>- s11(2) Any pre-sentence meeting directed to be convened by the Court will be conducted in accordance with Samoan custom and tradition as considered appropriate by a probation officer or as directed by the Court.</li> <li>- s23(2) ...regulations may be made for the purposes of - (a) prescribing procedures for proceedings in the Youth Court consistent with Samoan custom and tradition.</li> </ul> <p><i>Community Justice Act 2008</i> –</p> <ul style="list-style-type: none"> <li>- s2 The purpose of this Act is to administer and operate a community based justice system that will promote public safety and contribute towards the maintenance of a just society by: (e) providing opportunities for Samoan custom and tradition to be recognised in the sentencing, rehabilitation and reintegration of offenders; (f) ensuring that Samoan custom and tradition is integrated, where appropriate, in the community justice system.</li> </ul>	

		- s3. The principal objects of this Act are: (g) for Samoan custom and tradition, where appropriate, to be applied in the rehabilitation and reintegration of offenders. [Further supported in sections 6, 7, 10(2), 11(5) ]	
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<b>10 Refugees, unaccompanied children and migrant children CRC Articles: 1, 2, 3, 4, 6, 12 and 22</b>			
<b>Child protection indicator</b>	<b>Compliance</b>	<b>Relevant legislation</b>	<b>Comments</b>
10(1): Laws governing refugees and asylum seekers provide for special protection, care and treatment for: 10(1)(a): Unaccompanied and separated children seeking asylum or refugee status;	<b>No</b>		
10(1)(b): Internally displaced unaccompanied and separated children. 10(2): The law guarantees unaccompanied children and refugee and asylum seeking children the right to accommodation in safe environments, wherever possible with their family, as well as access to education, health care and appropriate support and rehabilitative care.	<b>No</b>		
10(3): Guidelines have been developed for the safe and timely return of illegal migrant	<b>No</b>		

children.			
10(4): Laws and procedures governing deportation require consideration of the best interests of the child and the child's right not to be separated from his or her parents (unless necessary for his or her best interests).	<b>No</b>		
10(5): Laws and procedures governing deportation require that the views of the child be sought and that those views be given due weight in accordance with the child's age and maturity.	<b>No</b>		
10(6): Laws, policies and mechanisms exist to trace family members of unaccompanied or displaced children.	<b>No</b>		
10(7): State required to provide such care and protection as is necessary for the wellbeing of any child at times of national disaster.	<b>Partly</b>	<p><i>Disaster and Emergency Management Act 2007 -</i></p> <ul style="list-style-type: none"> <li>- s13(1) All schools and tertiary institutions shall prepare response agency plans in accordance with any requirements imposed by the Disaster Advisory Committee. (2) The Plans shall aim to: (a) protect the welfare of students and staff during times of disaster or emergency through, inter alia, the provision of shelter, food, drinking water, clothing and other necessities of life; and (b) arrange for the safe accommodation of students until their tuition resumes or arrangements can be made for their return to their places of residence; and (c) continue or resume teaching as soon as practicable after the disaster or emergency abates; and (d) minimise any interruptions to the education offered to students; and (e) raise awareness amongst students and staff of the procedures to be undertaken and applied during disasters and emergencies.</li> <li>- s14 (3) [Other] bodies may liaise with the Disaster</li> </ul>	Schools are explicitly required to prepare disaster management plans. It is not clear whether representatives of other settings covering non-school children (e.g. villages, NGOs, hotels and tourist service operators) are required to also prepare disaster management plans or whether this is voluntary.

		Advisory Committee in preparing their plans.- i.e. those responsible for representing the interests of: (a) hotel and tourist service operators; and (b) commercial and industrial interests; and (c) employees and workers in sectors likely to be affected by disasters and emergencies; and (d) non-government organisations with an identified role to play in relation to disaster and emergency management; and (e) villages and other sectors of the community.	
10(8): Laws governing refugees, unaccompanied and migrant children are free from any unreasonably discriminatory provisions.	<b>No</b>	<i>The Constitution of the Independent State of Western Samoa Act 1960</i> – - s15(4) Nothing in the constitutional anti-discrimination provisions will affect the operation of any existing law or the maintenance by the State of any executive or administrative practice being observed on Independence Day	Explicitly condones any discriminatory provisions existing in legislation or the practice of the executive or administration at independence.
10(9): Independent, child-friendly complaints avenue for consideration and resolution of complaints from children regarding treatment as refugees, migrant or unaccompanied children.	<b>Partly</b>	<i>The Komesina o Sulufaiga (Ombudsman) Act 1988</i> – - Provides for an Ombudsman’s office to investigate any complaints by individuals in relation to treatment by listed public institutions. - s13 All complaints must be made in writing.	Investigation limited to specified public institutions, the service is not specified to cater for children. Nor is it set up in a child accessible way – for example, complaints must be in writing. There is a risk that children’s complaints in a non child specific service could be dismissed as frivolous
10(10): Laws require disaggregated data be recorded and reported in relation to refugees and asylum seekers	<b>No</b>		

<b>11</b>	<b>Children involved in armed conflict CRC Articles: 1, 2, 3, 4, 6, 12 and 38</b>		
<b>Child protection indicator</b>	<b>Compli</b>	<b>Relevant legislation</b>	<b>Comments</b>

	<b>ance</b>		
11(1): The law sets 18 as the minimum age for direct participation in hostilities, for recruitment into armed groups, and for compulsory recruitment by governments.	<b>No</b>		
11(2): The minimum voluntary recruitment age is at least 16, and the law outlines safeguards to ensure that recruitment is: genuinely voluntary and carried out with the informed consent of the person's parents or legal guardians; that the child is fully informed of the duties involved in military service; and the child provides reliable proof of age prior to acceptance into national military service.	<b>No</b>		
11(3): No discriminatory provisions in laws relating to children's participation in armed conflict.	<b>No</b>	<i>The Constitution of the Independent State of Western Samoa Act 1960 –</i> - s15(4) Nothing in the constitutional anti-discrimination provisions will affect the operation of any existing law or the maintenance by the State of any executive or administrative practice being observed on Independence Day	Explicitly condones any discriminatory provisions existing in legislation or the practice of the executive or administration at independence.

<b>12</b>	<b>Information access CRC Articles: 1, 2, 3, 4, 6, 12, 17 and 29</b>		
<b>Child protection indicator</b>	<b>Compliance</b>	<b>Relevant legislation</b>	<b>Comments</b>
12(1): Censorship board or equivalent with jurisdiction over all media – print, electronic and audio/visual.	<b>Partly</b>	<i>Film Control Act 1987 –</i> - s4 There shall be a Board to be called the Film Control Board ...	The Film Control Board is responsible for censoring films only, other TV shows, advertisements etc. are not formally

		- s5 The Board shall regulate and control the exhibition of films and the censorship thereof	regulated by any censorship body.
12(2): Requirement that pubertal change and sex education be included in school curricula.	? No		<b>The School curriculum does include sex education and pubertal change through the study of Science understanding the human body and through the study of Biology in the college level.</b>
12(3): Requirement that legal rights and human rights education be included in school curricula.	? No		
12(4): No discriminatory provisions in access to information.	No	<i>The Constitution of the Independent State of Western Samoa Act 1960 –</i> - s15(4) Nothing in the constitutional anti-discrimination provisions will affect the operation of any existing law or the maintenance by the State of any executive or administrative practice being observed on Independence Day	Explicitly condones any discriminatory provisions existing in legislation or the practice of the executive or administration at independence. Other specific discriminatory provisions are identified elsewhere in this document, such as gender discrimination in the <i>Crimes Ordinance</i> 1961 discussed under Article 34.

13 Birth registration CRC Articles: 1, 2, 3, 4, 6, 7 and 12			
Child protection indicator	Compliance	Relevant legislation	Comments
13(1): The law makes birth registration compulsory and free for all.	Yes	<i>Births, Deaths and Marriages Registration Act 2002 –</i> - s10 The person or health care facility in attendance at the birth must advise the Registrar of the birth of a child within 14 days of the birth - s11 and 12 Where the birth is not registered it must be notified to the Registrar within 3 months of the birth by	Birth required to be registered and, taking into account the realities of village life, the timeframe is reasonable.  The Government Women Representatives and Village Mayors are

		<p>the child's parents or carer (where the child is a foundling) or other person aware that birth has not and is not likely to be notified</p> <ul style="list-style-type: none"> <li>- s15 Failure to register or notify the birth as required by the Act constitutes an offence</li> <li>- s16 Where birth not notified, Registrar to obtain the necessary information and register the birth</li> </ul>	<p>also mandated by this legislation to register births and this also contributes to the role of government to secure registration of children.</p>
13(2): No discriminatory provisions in birth registration laws	<b>No</b>	<p><i>The Constitution of the Independent State of Western Samoa Act 1960</i> –</p> <ul style="list-style-type: none"> <li>- s15(4) Nothing in the constitutional anti-discrimination provisions will affect the operation of any existing law or the maintenance by the State of any executive or administrative practice being observed on Independence Day</li> </ul>	<p>Explicitly condones any discriminatory provisions existing in legislation or the practice of the executive or administration at independence. Other specific discriminatory provisions are identified elsewhere in this document, such as gender discrimination in the <i>Crimes Ordinance</i> 1961 discussed under Article 34.</p>