



GOVERNMENT OF SAMOA

Samoa
Law Reform Commission
Komisi o le Toefuataiga o Tulafono a Samoa

**CONVENTION ON THE
ELIMINATION OF ALL FORMS OF
DISCRIMINATION AGAINST WOMEN
(CEDAW)**

Discussion Paper (DP/03)

June 2015

The Samoa Law Reform Commission was established in 2008 by the Law Reform Commission Act 2008 as an independent body corporate to undertake the review, reform and development of the laws in Samoa. Its purpose is to facilitate law reform in Samoa by providing pragmatic recommendations based on high quality research, analysis and effective consultation.

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www.samoalawreform.gov.ws

CALL FOR SUBMISSIONS

Submissions or comments (formal or informal) on this Discussion Paper should be received by the Commission no later than close of business on **25 September 2015**.

Emailed submissions should be sent to:
commission@samoalawreform.gov.ws

Written submissions should be addressed and sent to:
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Oral Submissions should be voiced at our Public Consultations:
Dates, Time and Venues for public consultations will be announced on television, radio stations and newspapers for the public's information.

The Samoa Law Reform Commission seeks your views, comments and feedback on the Legislative Compliance Review on the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), in particular the questions set out in the last section of this Discussion Paper.

The submitters are advised to focus on any of the questions provided therein. It is definitely not expected that you will answer every question.

A Final Report and Recommendations to Government will be published in 2016.

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1. INTRODUCTION

A. CEDAW Background

1.1 The Convention on the Elimination of Discrimination against Women (**CEDAW**) is a significant international agreement that affirms the right for women to receive equal recognition of their human rights and fundamental freedoms in all areas of life, including in civil, political, economic, social, and cultural settings. CEDAW provides a comprehensive definition of discrimination, and sets out an agenda for States Parties to bring an end to any such discrimination.

1.2 CEDAW is one of the most widely ratified Conventions in the world, and was ratified without reservation by Samoa in 1992.¹ Samoa's ratification of CEDAW indicates its consent to be bound by the Convention and to enact necessary legislation to give domestic effect to CEDAW.

1.3 CEDAW includes articles guaranteeing substantive rights of women (articles 1 – 16), as well as articles concerned with the machinery for monitoring and promoting State compliance with the substantive obligations (articles 17 – 30). This includes the creation of the United Nations Committee on the Elimination of Discrimination against Women (**CEDAW Committee**)², and sets up mandatory reporting obligations that ensure that States regularly demonstrate to other

¹CEDAW Committee, Combined Initial, First and Second Periodic Report on the Convention on the Elimination of All Forms of Discrimination against Women, (2001).

<<http://daccess-dds-ny.un.org/doc/UNDOC/GEN/N03/397/37/PDF/N0339737.pdf?OpenElement>> (Accessed: 10/07/2014).

Ratification without reservation refers to an international Act by a State indicating consent to be bound by a treaty such as the CEDAW Convention without any declarations to exclude or alter the effect of such treaty and its application to the State:

United Nations, *Glossary: Glossary of Terms Related to Treaty Actions*, <https://treaties.un.org/pages/Overview.aspx?path=overview/glossary/page1_en.xml#reservation> (Accessed: 10/07/2014).

See also UN Women, *Do Our Laws Promote Gender Equality? A Handbook for CEDAW-Based Legal Reviews*, (3rd ed, 2013, UN Women), p. 7.

² The Committee on the Elimination of Discrimination against Women is a body of independent experts from 23 different countries that monitors the implementation of CEDAW.

Office of the High Commissioner for Human Rights, *Committee on the Elimination of Discrimination against Women*, <<http://www.ohchr.org/en/hrbodies/cedaw/pages/cedawindex.aspx>> (Accessed: 18/10/ 2013).

CEDAW States Parties the measures they have taken towards achieving CEDAW obligations.

1.4 The obligations under CEDAW embody the 3 key principles of substantive equality, non-discrimination, and State obligation:³

- a) States parties are called on to achieve *substantive equality* between women and men. This principle requires the realization of equal rights, responsibilities and opportunities of women and men, including girls and boys.⁴ Gender equality means that women's and men's rights, responsibilities and opportunities are not determined by their conceived gender.⁵ Substantive equality means equality in the experiences and results of women, and not just equality 'on paper'. Therefore gender neutral language in legislation may not necessarily achieve substantive equality if it does not take into account the differences in the needs of women and men.⁶
- b) The second principle of *non-discrimination* is key throughout CEDAW, and is particularly emphasised in Article 1 which defines discrimination against women. This principle prohibits actions and omissions that treat people differently on the basis of their sex and prohibits both *direct* discrimination, which includes actions and laws intended to treat men and women differently, and *indirect* discrimination which includes actions and laws that have the effect of discriminating against women, even if they are not intended to have that effect.
- c) Under the third principle, it is the *State government that holds the obligation* to ensure equality and eliminate discrimination against women. Therefore, the Samoan Government is accountable to CEDAW to work towards the elimination of discrimination against women in Samoa. This commitment is coupled with the Government's obligation to fulfil its Millennium

³ UN Women, Do our laws promote gender equality?, (2010) p. 7.

⁴ United Nations: Division for the Advancement of Women, *The Role of Men and Boys in Achieving Gender Equality*, (2008).

⁵ United Nations: Division for the Advancement of Women, *Ibid*.

⁶ Committee on the Elimination of Discrimination against Women, General Recommendation (CEDAW) GR No. 25: *Article 4 Paragraph 1 – Temporary Special Measures*, (2004).

Development Goals⁷, which includes the promotion of gender equality and empowerment of women.⁸

B. Terms of Reference

1.5 In 2008, the Commission received a reference from the Attorney General to review the level of compliance of Samoa's legislation with its obligations under CEDAW. Part of this review included identifying any issues related to non-compliance, and making recommendations for reform.⁹

C. CEDAW in Samoa

1.6 Samoa has made significant progress towards meeting various CEDAW obligations since becoming a party in 1992. It has had significant legislative reforms in key areas since a Legislative Compliance Review in 2007 published by UNIFEM, and since the CEDAW Committee last reported on Samoa's compliance as recently as 2012.¹⁰

1.7 Recent legislative reforms that have had a significant impact on Samoa's legislative compliance with CEDAW include the following that are discussed in more detail in this paper:

⁷ United Nations Millennium Project Secretariat, *Millennium Development Goals*, (2002-2006) <<http://www.unmillenniumproject.org/goals/>> (Accessed: 10/10/2014); See Tung, Asenati L.C. 2013. Leading the March for Gender Equality? Women Leaders in the Public Services of Samoa and Solomon Islands. In Hegarty, David and Tyron, Darrell (Eds.) *Politics, Development and Security in Oceania* (Studies in State and Society in the Pacific, No. 7) (pp 139-146). Canberra, Australia: Australian National University E Press; Petersen, Linda. 2013. Millennium Development Goals and the Pacific. In Hegarty, David and Tyron, Darrell (Eds.) *Politics, Development and Security in Oceania* (Studies in State and Society in the Pacific, No. 7) (pp 127-138). Canberra, Australia: Australian National University E Press. MDGs were developed from the *UN Millennium Declaration: United Nations Assembly, United Nations Millennium Declaration, Resolution adopted by the General Assembly, 18 September 2000, A/RES/55/2* <<http://www.refworld.org/docid.3b00f4ea3.html>> (Accessed: 04/03/2015).

⁸ United Nations Millennium Project Secretariat, *Millennium Development Goals*, (2002-2006) <<http://www.unmillenniumproject.org/goals/>> (Accessed: 10/10/2014), MDG Goal 3.

⁹ A working group was established to assist the Commission with identifying relevant measures carried out by various Government agencies relevant to Samoa's obligations under CEDAW. The Working Group consisted of representatives from the Office of the Attorney General, Office of the Ombudsman, Ministry of Women, Community and Social Development, Ministry of Police, Ministry of Commerce Industry and Labour, Ministry of Education Sports and Culture, Ministry of Health, and National Health Services, including an observer from UN Women.

¹⁰ Government of Samoa, *Report on the Status of Women*, (2009) p. 60.

- The *Constitution Amendment Act 2013*, providing for a minimum number of women members of the Legislative Assembly so that women consist at least 10% of Parliament;
- Legislative amendments ensuring gender neutral language in all legislation;¹¹
- A recent revision of criminal law resulting in the passing of the *Crimes Act 2013*, which, among other things specifically recognised marital rape as an offence, and introduced trafficking offences;
- The new *Family Safety Act 2013*, providing greater protections in cases of domestic violence;
- The creation of a new specialised Family Court under the *Family Court Act 2013*;
- New employment legislation specifically incorporating principles of equality and non-discrimination in the *Labour and Employment Relations Act 2013*; and
- Amendments to the *Divorce and Matrimonial Causes Ordinance 1961* in 2010, among other things, providing for non-fault-based divorce, and ensuring non-financial contributions are also taken into account in marital property disputes.¹²

1.8 This Discussion Paper will be used for public consultation as a starting point for discussion about areas in which any perceived gaps in compliance with CEDAW still exist. Following public consultations, a Final Report will be produced by the Commission providing a full assessment of legislative compliance with CEDAW, including recommendations for reform where appropriate.

¹¹ *Revision and Publication of Laws Act 2008*, s. 5(o).

¹² *Divorce and Matrimonial Amendment Act 2010*.

2. ASSESSING LEGISLATIVE COMPLIANCE WITH CEDAW

A. Methodology

- 2.1 This legislative review is not an analysis of Samoa's overall compliance with the Convention, but a focus on its legislative compliance. It is important to note that legislation is just one aspect of achieving the aims of CEDAW, and is part of a broader context of measures targeting discrimination, not fully addressed by this review.
- 2.2 To be effective, legislative change must be accompanied by policies that ensure that it is implemented in a non-discriminatory way, as well as public education and awareness raising about discriminatory practices and issues facing women. In some areas where women experience discrimination, legislation may not be an appropriate response at all, and other measures may be sufficient and more effective on their own.
- 2.3 This review focuses on Samoa's domestic legislation, and assesses both the *words* of the legislation and, where possible with available data, the *impact* of the legislation on the lives of women and girls in Samoa, against the substantive articles of CEDAW (articles 1-16).
- 2.4 Legislative compliance indicators¹³ are used as a guide to aid the assessment of compliance with the Articles. Policies, institutional arrangements or programmes may also occasionally be discussed briefly where these are relevant to discussion of the effectiveness of, or need for, particular legislation in meeting CEDAW obligations.
- 2.5 This Discussion Paper is the first stage of the legislative compliance review. This Discussion Paper provides a preliminary indication whether Samoa's legislation is consistent with obligations under CEDAW and where possible at this stage a preliminary assessment of the level of compliance of Samoa's legislation as being

¹³ Discussed under Part 2, B of the Discussion Paper.

one of the following three levels – non compliant, partially compliant, or fully compliant.¹⁴

- a) **Non compliance** means the absence of a legal provision responding to the obligation, or the existence of a law contrary to the obligation or an inappropriate law.
- b) **Partial compliance** means that a legal provision exists but it is inadequate. Indications of inadequacy may mean that there is a good law that is not effectively implemented or that the de facto situation requires further legal guarantees.
- c) **Full compliance** means the existence of a legal provision responding to the obligation and that no further legal provisions are needed for compliance.

2.6 In this Discussion Paper, guidance on what is required to comply with the CEDAW articles is taken from indicators of legislative compliance, comments of the CEDAW Committee in General Recommendations, and also Concluding Observations by the CEDAW Committee in regards to Samoa from the last time Samoa's compliance came before the Committee in 2012.

2.7 Our approach to assessing compliance is summarised below. Consultations will be particularly important to gather insight into the public perception of any apparent gaps highlighted, allowing a more nuanced assessment of the need and priority of reform, in the context of Samoa. It will also allow public input into the assessment of the actual impact of legislative measures that are in place, to identify any gaps in substantive equality that are experienced by women in Samoa but which may not be apparent on the face of the legislation and available data.

B. Legislative Compliance Indicators

2.8 Legislative compliance indicators are specific, observable and measurable characteristics that can be used to show changes or progress that legislation is

¹⁴ In accordance with the guide developed by UNIFEM – see UN Women, *Do Our Laws Promote Gender Equality? A Handbook for CEDAW-Based Legal Reviews*, (3rd ed, 2013, UN Women).

making towards achieving a specific outcome.¹⁵ The indicators are used only as a guide providing a useful, tangible, way to initially assess compliance, but is not a substitute for the official text.

2.9 It is not necessary for Samoa to have full compliance with all individual indicators to achieve compliance with the Article. Where legislative compliance indicators are not met, the Article must still be assessed against Samoa's context to determine whether the absence of the indicator leads to any substantial non-compliance with the obligation in the article itself.

2.10 Legislative compliance indicators for CEDAW were initially developed and published in 2007 by UNIFEM Pacific.¹⁶ The initial list contained 113 indicators that reflected how the spirit of CEDAW could be translated into law (**2007 Compliance Indicators**).¹⁷

2.11 At the same time, UNIFEM Pacific also commissioned a review of legislative compliance with CEDAW in 6 Pacific Islands Countries, including Samoa, using the 113 indicators that had been developed (**UNIFEM review**).¹⁸ The UNIFEM review found that Samoa had achieved full compliance with 40 indicators of the 113, partial compliance with 23 indicators, and no compliance in relation to the remaining 50 indicators.¹⁹

2.12 The 2007 Compliance Indicators have since been reviewed and updated by UN Women (Fiji) in 2013 to 104 revised legislative compliance indicators (**Compliance Indicators**) in a way that better reflects the local Pacific context.²⁰ This review has particularly focused on Compliance Indicators that are relevant and applicable to Samoa and the Samoan context.

¹⁵ UN Women, *Indicators*, (2012) <<http://www.endvawnow.org/en/articles/336-indicators.html>> (Accessed 04/03/2015).

¹⁶ Vedna Jivan and Christine Forster, *Translating CEDAW into Law: CEDAW Legislative Compliance in Nine Pacific Island Countries* (UNDP Pacific Centre and UNIFEM Pacific Regional Office, 2007).

¹⁷ *Ibid.*

¹⁸ *Ibid.*

¹⁹ *Ibid.*

²⁰ UN Women, *CEDAW Legislative Indicators*, (2014). These comprise 83 'revised indicators' plus a recommendation to consider 21 particular indicators from the original 2007 Compliance Indicators.

2.13 A table setting out the Compliance Indicators, together with the relevant legislation, an initial assessment as to the level of compliance achieved by Samoa, and a brief explanation of how the legislation may or may not meet the Compliance Indicators is annexed to this Discussion Paper (**Appendix 2**). However, as noted, non-compliance with a particular legislative indicator does not necessarily indicate non-compliance with the obligation in CEDAW: the appropriateness of legislation must be assessed against Samoa's context, as discussed further below.

C. CEDAW Committee – General Recommendations and Concluding Observations

2.14 The CEDAW Committee formulates general recommendations to provide guidance as to how CEDAW requirements can be implemented in legislation or through non-legislative measures. The CEDAW Committee General Recommendations cover a range of topics including violence against women,²¹ and women in public and political life.²²

2.15 The CEDAW Committee Concluding Observations (also referred to as concluding comments) are a collective assessment by the CEDAW Committee of a State's record and recommendations for enhanced implementation of the rights in question in that State.²³ Concluding Observations made in relation to Samoa in 2012, highlighted areas that were assessed as most in need of reform in Samoa,²⁴ and which Samoa must answer to the CEDAW Committee on its progress.

²¹ United Nations Entity for Gender Equality and Empowerment of Women, *CEDAW General Recommendations*, (2009), <<http://www.un.org/womenwatch/daw/cedaw/recommendations/index.html>>(Accessed: 04/03/2015).

²² Committee on the Elimination of Discrimination against Women, General Recommendation (CEDAW) GR No: 23: *Women in Political and Public Life* (1997).

²³ UN Women, Committee on the Elimination of Discrimination against Women, (2014). <<http://www.un.org/womenwatch/daw/cedaw/committee.htm>> (Accessed: 21/11/2014).

²³ UNHCR, *Concluding Observations* (2015). < <http://www.refworld.org/type/CONCOBSERVATIONS.html>> (Accessed: 04/03/2015).

²⁴ Committee on the Elimination of Discrimination against Women, Fifty-second session 9-27 July 2012, CEDAW/C/WSM/CO/4-5, (2012).

D. Appropriate measures

2.16 The obligation under most of the substantive articles of CEDAW is that the State should take 'all appropriate measures' to eliminate discrimination in the relevant area or to achieve the particular objective. This recognises that the issues faced by women in different States are diverse and may depend on the historical, social and cultural context, and that appropriate solutions may be different for different States. It also recognises the limitations such as resource and financial limitations that States may face in implementing certain measures. Furthermore, it recognizes that legislation is just one tool for reform, and some goals ask for deeper social change that may not be brought about simply by way of legislation alone.

2.17 The requirement that Samoa takes 'all appropriate measures' therefore contains a degree of flexibility as there is often no one specific measure – and in particular, legislative measure – required to comply with the substantive articles of CEDAW. Although the Compliance Indicators provide a guide as to how legislation could be used to meet CEDAW obligations, measures that are appropriate for Samoa depend on the economic, social, and cultural context of Samoa.

E. Our approach to assessing compliance and making recommendations

2.18 As noted, the aim of this Discussion Paper is to gain deeper understanding of the issues that are significant for women in Samoa, to assess the actual impact of legislative measures that are in place, and to identify any gaps in substantive equality that are experienced by women in Samoa that may not be apparent on the face of the legislation and available data.

2.19 In Part IV below, each substantive article of CEDAW is outlined, along with a summary of the law currently in place in Samoa, and an outline of issues that have been raised by the CEDAW committee or have arisen in initial research and discussion with our Working Group. We have highlighted specific questions arising in relating to each article, focussing on issues that we think are most important for women in Samoa. We are also broadly seeking responses and comments in relation to all articles and indicators.

2.20 Our approach to assessing legislative compliance is summarised below. We welcome comments that would aid in making this assessment in relation to any article or indicator.

- a) Is legislation in place that corresponds to the relevant legislative compliance indicator?
- b) If **YES**, does it achieve the aim of the CEDAW article/obligation? How?
- c) If **NO**, are there other, non-legislative, measures in place that achieve the aim of the article/obligation?
- d) If **YES**, what are they?
- e) If **NO**, would legislation help achieve the aim of the CEDAW article/obligation, or would other non-legislative measures be appropriate?
- f) What social or cultural factors may protect women in Samoa from discrimination, if any?

3. CEDAW AND THE FA'ASAMOA

3.1 CEDAW may be perceived by some people as an instrument imposed against Samoan culture. However, many of the key principles that are enshrined in CEDAW have a deeper relevance to the Samoan society. In some ways CEDAW is an international legal framework to values that are already included within the *fa'asamoa*. For example, respect for the value and dignity of women – a key overarching principle of CEDAW – is deeply embedded in traditional *fa'asamoa* values and practices. The concept of *feagaiga* or the sacred relationship between a brother and a sister, encapsulates this value. In addition, Samoan mothers or '*tina ma tausi*' are seen as the '*faufautua*' or advisors to their husbands, *matai*, church, and village councils, showing a traditional respect for the voice of women in political and public, as well as family, affairs.²⁵

3.2 The values above demonstrate that there is an integral respect for women within Samoan culture without necessarily the need to codify such respect in legislation. Alternatively these rights and values can be given formal and enforceable recognition via legislation.

3.3 However in some areas, traditional cultural values may appear to run counter to principles of CEDAW. For example, the traditional *fa'amatai* social structure contains distinct roles for men and women, and for women descended to a village (*aualumua*) compared with women who have married into a village (*faletua ma tausi*).²⁶ Although these distinct roles may not necessarily be inconsistent with CEDAW obligations, they can influence public expectations of appropriate roles for women, which may impact on how many women take up particular public roles, thus indirectly impacting on Samoa's compliance with CEDAW.²⁷ In such instances, the government may be required under CEDAW to counter traditional expectations by legislating to ensure *de facto* equality of opportunity.

²⁵ P Maiava, *O le tofa mamao: A Samoan Conceptual Framework for addressing family violence*, (2012).

²⁶ Dunlop F. P, *Tama'ita'i Samoa: Their Stories*, Institute of Pacific Studies, Suva, Fiji (1996).

²⁷ See for example, Meleisea, M, et al, *Political Representation and Women's Empowerment in Samoa*, (2015).

3.4 Quite significant is that almost all substantive articles of CEDAW require a State to take 'all appropriate measures'. The 'appropriate measures' standard requires the cultural and social framework to be taken into account. CEDAW does not prescribe any particular solution to addressing inequality, as equality can be achieved in diverse ways in different environments. It follows that equality of women in Samoa must be implemented in a way that is appropriate in the context of Samoa.

4. COMPLIANCE WITH CEDAW

Articles 1 and 2: “Discrimination against Women”

Article 1

For the purposes of the present Convention, the term “discrimination against women” shall mean any distinction, exclusion or restriction made on the basis of sex which has the effect or purpose of impairing or nullifying the recognition, enjoyment or exercise by women, irrespective of their marital status, on a basis of equality of men and women, of human rights and fundamental freedoms in the political, economic, social, cultural or any other field.

Article 2

States Parties condemn discrimination against women in all its forms, agree to pursue by all appropriate means and without delay a policy of eliminating discrimination against women and, to this end, undertake:

- (a) To embody the principle of the equality of men and women in the national constitutions or other appropriate legislation and to ensure through the law and other appropriate means, the practical realisation of this principle;
- (b) To adopt appropriate legislative and other measures, including sanctions where appropriate, prohibiting all discrimination against women;
- (c) To establish legal protection of the rights of women on an equal basis with men and to ensure through competent national tribunals and other public institutions the effective protection of women against any act of discrimination;
- (d) To refrain from engaging in any act or practice of discrimination against women and to ensure that public authorities and institutions shall act in conformity with this obligation;
- (e) To take all appropriate measures to eliminate discrimination against women by any persons, organisation or enterprise;
- (f) To take all appropriate measures, including legislation, to modify or abolish existing laws, regulations, customs and practices which constitute discrimination against women;
- (g) To repeal all national penal provisions, which constitute discrimination against women.

4.1 Article 1 of CEDAW sets out a working definition of “discrimination against women”. It focuses on the effect of any action that may be discriminatory, even if the purpose is not discriminatory.

4.2 Article 2 states the duty on State Parties to uphold the principles of CEDAW, and in particular to ensure a legal framework to provide protection against discrimination and embody the principle of equality. It encompasses the duty and responsibility of Government to:

- a) ensure that there are legislation, national policies, programs and activities in place that would represent the principles of equality of men and women;
- b) promote and ensure non-discriminatory practices in all areas of society; and
- c) provide legal protection for women and girls from any exclusion, abuse and restrictions.

4.3 These articles prohibit any type of discrimination which includes any law or action that is discriminatory in its practical application (indirect discrimination).

4.4 The legislative Compliance Indicators for these articles include provisions that guarantee rights for women and especially rights of equality and non-discrimination.²⁸ This includes substantive provisions, as well as mechanisms for enforcement and remedy against public and private actors.²⁹ Comprehensive provisions surrounding domestic and gender-based violence are also identified as key legislative Compliance Indicators with these articles.³⁰ This recognises that gender-based violence is a form of discrimination that critically inhibits women’s ability to enjoy rights and freedoms on a basis of equality with men.³¹

²⁸ See Compliance Indicators 2.1 – 2.9, in Appendix 2.

²⁹ See Compliance Indicators 2.7-2.9, Appendix 2.

³⁰ See Compliance Indicators 2.10 – 2.22 in Appendix 2.

³¹ Committee on the Elimination of Discrimination against Women, General Recommendation (CEDAW) GR No: 19: *Violence against Women*, (1992) esp [1], [11], and [24].

A. Guarantees of Rights, Equality, and Non-discrimination

Relevant law

Constitutional right to freedom from discrimination

4.5 The *Constitution of the Independent State of Samoa 1960* (**Constitution**) is the supreme law of Samoa and all legislation of Samoa must be consistent with it. This includes rights of equality and freedom from discrimination under Article 15 of the Constitution.

4.6 Article 15 states as follows:

Article 15 Freedom from discriminatory legislation

- (1) *All persons are equal before the law and entitled to equal protection under the law.*
- (2) *Except as expressly authorised under the provisions of this Constitution, no law and no executive or administrative action of the State shall, either expressly or in its practical application, subject any person or persons to any disability or restriction or confer on any person or persons any privilege or advantage on grounds only of... sex...[or] family status.*
- (3) *Nothing in this Article shall:*
...
 - (b) *prevent the making of any provision for the protection or advancement of women or children...*
- (4) *Nothing in this Article shall affect the operation of any existing law or the maintenance by the State of any executive or administrative practice being observed on Independence Day:*
PROVIDED THAT the State shall direct its policy towards the progressive removal of any disability or restriction which has been imposed on any of the grounds referred to in clause (2) and of any privilege or advantage which has been conferred on any of those grounds.

Other substantive rights

4.7 Part II of the Constitution also sets out further fundamental human rights and freedoms for all Samoans. These include:

- The right to life;³²
- Right to personal liberty;³³
- Freedom from Inhuman Treatment;³⁴
- Freedom from Forced Labour;³⁵
- Right to a fair trial;³⁶
- Rights concerning criminal law;³⁷
- Freedom of religion;³⁸
- Rights concerning religious instruction;³⁹
- Rights regarding freedom of speech, assembly, association, movement and residence;⁴⁰
- Rights regarding property;⁴¹

4.8 The express provision of such rights and protections under the Constitution being the supreme law of Samoa is very significant, as all legislation in Samoa must be consistent with such rights and protections. These rights and protections are all relevant to obligations under CEDAW.

4.9 Samoan Courts have interpreted the Constitution as empowering the State to make laws which impose reasonable restrictions on individual rights (such as the rights to freedom of religion and freedom of speech).⁴² However, caution is still

³² *Constitution of the Independent State of Samoa 1960*, Art. 5.

³³ *Ibid*, Art. 6.

³⁴ *Ibid*, Art. 7.

³⁵ *Ibid*, Art. 8.

³⁶ *Ibid*, Art. 9.

³⁷ *Ibid*, Art. 10.

³⁸ *Ibid*, Art. 11.

³⁹ *Ibid*, Art. 12.

⁴⁰ *Ibid*, Art. 13.

⁴¹ *Ibid*, Art. 14.

⁴² See for example, in relation to article 15, *Sia v Peteru* [1998] WSSC 37. See also article 13(2) in relation to article 13 rights, providing that laws may impose reasonable restrictions on those rights.

required so that what is described as a reasonable restriction on a human right would not result in the denial of that right.⁴³

4.10 There are instances where Samoan customs and tradition (based on a collective philosophy and set of values where the interests of the individual are subordinate to the interests of the family or village community) may be at odds or conflict with the rights enshrined in the Constitution (based on individual philosophy).⁴⁴ However, individual human rights (such as the right to freedom of religion) have typically prevailed in the Samoan Courts, in the event of a conflict with custom because they are enshrined in the Constitution.⁴⁵ This is discussed in more detail under the Article 5 discussion.

*Mechanisms for enforcement*⁴⁶

4.11 The Constitution expressly provides under Article 4 that any person may apply to the Supreme Court to enforce their rights, and that the Supreme Court may grant remedies to that person as appropriate to address any breach.⁴⁷

4.12 If a person is subject to a discriminatory administrative decision by a Ministry or public body, they may also have recourse to the Ombudsman, who may make recommendations to the decision-maker that the decision be reconsidered or rectified if it is oppressive or discriminatory.⁴⁸ The Ombudsman, through the National Human Rights Institute, also has the ability to investigate any potential widespread, systemic, or entrenched situations or practices that violate human rights including the right to freedom from discrimination.⁴⁹

⁴³ Hon. Chief Justice Patu Tiavaasue Falefatu Maka Sapolu, *Australasian Law Reform Agencies Conference: General Address*, (2014).

⁴⁴ Hon. Chief Justice Patu Tiavaasue Falefatu Maka Sapolu, *ibid.*

⁴⁵ Hon. Chief Justice Patu Tiavaasue Falefatu Maka Sapolu, *ibid.*

⁴⁶ See Article 2(a), (b), (c); and Compliance Indicators 2.7 – 2.9, Appendix 2.

⁴⁷ Constitution of the Independent State of Samoa, Art. 4.

⁴⁸ Under the *Ombudsman (Komesina o Sulufaiga) Act 2013*, esp ss. 18 and 28. The Ombudsman's Office also has particular functions with regard to monitoring CEDAW compliance, discussed under Article 3 of the Discussion Paper.

⁴⁹ *Ombudsman (Komesina o Sulufaiga) Act 2013*, s. 33.

Issues and discussion

4.13 The CEDAW Committee raised concerns that the Convention had not been fully implemented as part of Samoa's domestic law, and called upon Samoa to adopt and incorporate into the Samoan Constitution or other domestic legislation the specific CEDAW definition of discrimination against women, or a definition in line with Article 1 of CEDAW,⁵⁰ indicating that the inclusion of an express anti-discrimination provision relating to women would make Samoa fully compliant.⁵¹

4.14 Further, while there are multiple mechanisms for individuals to enforce rights (including the freedom from discrimination) against public bodies and an independent institution to look into widespread and systematic abuses of human rights, there is no direct ability for individuals to enforce their rights against private bodies excepted in limited circumstances such as employment (discussed below). Legislation therefore does not provide protection against discriminatory actions by, for example, a Non-Governmental Organisation (NGO), or a church, unless such discrimination is widespread, systematic or entrenched.⁵²

Preliminary Assessment of Legislative Compliance

4.15 Overall, Samoa's legislation appears largely consistent with the requirements in Articles 1 and 2 of CEDAW to provide rights to women. The right to freedom from discrimination is expressly stated in the supreme law of Samoa. All legislation in Samoa is required to be consistent with the Constitution, and therefore with the right to freedom from discrimination. The provision protects against direct and indirect discrimination, and is enforceable through the courts.

4.16 The CEDAW Committee suggests that to be fully compliant, Samoa should incorporate the CEDAW definition of 'discrimination against women' in the Samoan Constitution or legislation. This would be a matter of adopting the language already used in the convention into domestic legislation. An alternative could be enacting law that would require Samoan legislation (including the Article

⁵⁰ Committee on the Elimination of Discrimination against Women, Fifty-second session 9-27 July 2012, Concluding Observations, Samoa, CEDAW/C/WSM/CO4-5, (2012) paras 12-13.

⁵¹ Committee on the Elimination of Discrimination against Women, *ibid*, para 13(b).

⁵² And therefore, can be investigated under Part 4 of the *Ombudsman (Komesina o Sulufaiga) Act 2013*.

15 of the Constitution) to be interpreted consistently with Samoa's international obligations, in this case, CEDAW.

4.17 The lack of protection against discrimination by private bodies or organisations is a further area that may limit the effectiveness of the protections from discrimination, and is therefore another potential area where Samoa shows only partial compliance.

B. Domestic and Gender-based Violence

Relevant law

Domestic Violence

4.18 A specialised Family Court has recently been established as a division of the District Court under the *Family Court Act 2014* to deal with, among other things, domestic and family violence.⁵³ The majority of the matters that are heard in the Family Violence Court (i.e. the criminal arm of the Family Court) relate to domestic violence between couples, with the majority of victims being women, sometimes involving extended families, in-laws, step children and step parents.⁵⁴ The second most common matter before this Court relates to issues concerning children and their guardians.

4.19 The *Family Safety Act 2013* provides further protection for women and men who are victims of domestic violence. Of great significance is the ability to apply for an Interim Protection Order or a Protection Order which is issued by the Family Court to protect persons in a domestic relationship from domestic violence. The most common victims in such cases are women.⁵⁵

4.20 The *Family Safety Act* uses inclusive definitions of 'domestic relationship' and 'domestic violence' ensuring that it covers a wide range of circumstances. A 'domestic relationship' includes unmarried persons living together, as well as

⁵³ *Family Court Act 2014* (Samoa), s. 4(2)(a). This is discussed further under Article 16 below.

⁵⁴ Judge Tuala-Warren, Ending Violence in Samoa, Roundtable, UN Women Pacific, 25 June 2015.

⁵⁵ Judge Tuala-Warren, Ending Violence in Samoa, Roundtable, UN Women Pacific, 25 June 2015.

courtships (for example a girlfriend and boyfriend relationship).⁵⁶ ‘Domestic Violence’ is defined under that Act as including physical, sexual, emotional, verbal and psychological abuse, intimidation, harassment, stalking, or 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.⁵⁷

4.21 This legislation also provides a process to ensure that these remedies are readily accessible and can be issued promptly when necessary. For example there are no fees for making an application for an Interim Protection Order and it can be applied for at any time, including outside of work hours and weekends and public holidays.⁵⁸ An Interim Protection Order is normally issued within 12 hours of the complaint and is then served by police on the party that has committed the act of violence.⁵⁹ A victim can be represented by a range of people including a village representative, Child Welfare officer, health service provider, social worker, teacher, or other person approved by the Court.⁶⁰

4.22 Police are required to assist and inform complainants of their rights without any discrimination on any grounds such as race, sex, disability, and guarantee equal and effective protection.⁶¹ The Police must also take all necessary steps in cases of physical or sexual abuse to ensure that the offender is prosecuted if there is sufficient evidence for doing so, even where the victim wishes to withdraw the complaint.⁶²

⁵⁶ *Family Safety Act 2013*, s. 2.

⁵⁷ *Ibid*, s. 2.

⁵⁸ *Ibid*, s. 4(6). “Despite any other law, an application made [for an protection order] may be brought outside ordinary Court hours or on a day which is not an ordinary court day, where, in the opinion of the Court, the complainant is likely to be either physically or sexually harmed by the Respondent if the application is not dealt with as a matter of urgency”.

⁵⁹ *Ibid*, s. 2.

⁶⁰ *Ibid*, s. 4.

⁶¹ *Ibid*, s. 15.

⁶² *Ibid*, s. 16.

4.23 In addition, the *Divorce and Matrimonial Amendment Act 2010* enables divorce to be expedited where the Court is satisfied that a party to the marriage is the subject of domestic violence.⁶³

*Rape and sexual violation*⁶⁴

4.24 Samoa's laws regarding rape and sexual violence have also been recently reviewed. There are a broad range of sexual offences under the *Crimes Act 2013*. Under the Act, 'sexual violation', which includes both rape by a male of a female, and unlawful sexual connection, occurs if the relevant act is committed without the other person's consent freely and voluntarily given.⁶⁵ It is now specified that a person can be convicted of sexual violation of another person notwithstanding that those persons were married to each other.⁶⁶

4.25 Furthermore, the Act expressly sets out the circumstances which do not in themselves amount to consent. For example, a lack of protest or physical resistance to the sexual connection or other sexual activity does not amount to consent,⁶⁷ nor does consent extorted by fear of bodily harm or by threats.⁶⁸ However, it remains a defence of rape that the accused honestly and reasonably believed that the consent was given.⁶⁹

4.26 There are also specific offences for incest and for sexual conduct with children (under 12), young persons (under 16), and dependent family members (under 21).⁷⁰ In general consent is not a defence to these offences.⁷¹

4.27 The penalties for sexual related offences have been generally increased under the new *Crimes Act*, reflecting the seriousness of these offences.⁷²

⁶³ *Divorce and Matrimonial Causes Ordinance 1961*, s. 7(3).

⁶⁴ See Compliance Indicators 2.22 and 'old indicator numbers' 1.13; 1.16; 1.18; 1.20, 1.21, 1.22, 1.23, 1.24, 1.25, 1.26, 1.30. See Appendix 2.

⁶⁵ *Crimes Act 2013*, ss. 49 and 50.

⁶⁶ *Ibid*, s. 49(4).

⁶⁷ *Ibid*, s. 51(1)(a).

⁶⁸ *Ibid*, s. 51(1)(b)(i).

⁶⁹ *Ibid*, s. 51(3).

⁷⁰ See *Crimes Act 2013*, ss. 55, 56, 58, and 59. "Dependant family member" is defined broadly in s. 57.

⁷¹ See *Crimes Act 2013*, ss. 56(5); 58(5), 61(2)(a).

Issues and discussion

4.28 Domestic and gender-based violence is a significant issue in Samoa. A study by NUS states that there is a rising incidence of such violence, but there are few deterrents or social mechanisms to reduce the problem.⁷³

4.29 Samoa's criminal law provides a broad range of offences targeting sexual and gender-based violence. However, other factors, such as the widespread acceptance of family violence may influence the effectiveness of these laws.⁷⁴ Procedures under customary governance may also affect the effectiveness of the legislation. For example, some Village Fono require that matters be raised with the Fono before being raised with police, which may deter the laying of complaints, especially if the alleged perpetrator is a member of that fono.⁷⁵

4.30 In addition, Samoa's legislation does not fully comply with a small number of the relevant legislative Compliance Indicators. These include legislative provisions under evidence law prohibiting the use of prior sexual conduct to establish consent, and prohibiting a requirement for corroboration evidence.⁷⁶ However, Samoa's *Evidence Act* is currently under review. Though a Bill is yet to be tabled in Parliament, initial indications suggest that it will address at least the requirement for corroboration.⁷⁷

4.31 Further, the Compliance Indicators suggest a provision in criminal law legislation to the effect that customary practices of forgiveness shall not affect criminal prosecution or sentencing.⁷⁸ In Samoa, punishments imposed by a person's village council and the performance of *ifoga* is recognised as mitigating

⁷² For example, the penalty for attempted rape has increased from 7 to 14 years, incest: 7 to 20 years, sexual conduct with a family member: 7 to 14 years, sexual conduct with child under 12: 7 to life imprisonment, sexual conduct with young person under 16: 7 to 10 years. *Crimes Act 2013*, ss. 53, 55-56, 58-59.

⁷³ Meleisea, M, et al, *Political Representation and Women's Empowerment in Samoa*, (Vol 1, 2015), p 46.

⁷⁴ Meleisea, M, et al, *Political Representation and Women's Empowerment in Samoa*, (2015).

⁷⁵ *ibid*, p 45.

⁷⁶ Compliance indicator 2.22(b), and 'old indicator number' 1.21 and 1.22.

⁷⁷ Office of the Attorney General – Samoa, *PILON Report*, (2014) p. 13.

⁷⁸ Vedna Jivan and Christine Forster, *Translating CEDAW into Law: CEDAW Legislative Compliance in Nine Pacific Island Countries* (UNDP Pacific Centre and UNIFEM Pacific Regional Office, 2007) p. 17.

factor in sentencing including in cases involving sexual violence.⁷⁹ The commentary around the Compliance Indicators suggests that this recognition prevents adequate sanctions being imposed on perpetrators of violence against women.⁸⁰

4.32 However, one of the purposes of *ifoga* is to seek forgiveness from the victim's family, and to preserve peace between the offender and the victim and their respective families.⁸¹ It is an important aspect of maintaining village harmony in a communal living setting.

Preliminary Assessment of Legislative Compliance

4.33 Overall, Samoa's criminal legislation demonstrates a broad compliance with the obligation under Article 2 to take appropriate measures to condemn and sanction discrimination against women, in this case in the form of violence.

4.34 There has been a significant amount of recent legislative review including recent reforms that strengthen sanctions, processes and remedies around domestic violence. These show a significant improvement in terms of CEDAW compliance, and should be allowed to be tested with the fullness of time. Non-legal barriers are also being addressed through non-legislative measures including awareness-raising and encouragement of village councils and churches to take action on family violence.⁸² Ongoing review in the area of evidence law,⁸³ and ongoing reform looking at alcohol reform⁸⁴ and a possible sex offenders' register,⁸⁵ has potential to improve compliance even further.

⁷⁹ See for example *Police v Moatoga* [2012] WSSC 61; *Police v Lauvao* [2011] WSSC 75.

⁸⁰ Vedna Jivan and Christine Forster, *Ibid.*

⁸¹ Hon. Chief Justice Patu Tiavaasue Falefatu Maka Sapolu, *Australasian Law Reform Agencies Conference: General Address*, (2014) p. 10.

⁸² For example, the MWCSO will be leading a programme to initiate village-level 'community conversations' toward social action against family violence: See Meleisea, M, et al *Political Representation and Women's Empowerment in Samoa*, (2015) at p 46 of Volume 1. See also the statement by Samoa's Ombudsman (Samoa Observer, 10 July 2014).

⁸³ Office of the Attorney General – Samoa, *PILON Report*, (2014) p. 13.

⁸⁴ See, Samoa Law Reform Commission, *Alcohol Reform Issues Paper*, (2013).

⁸⁵ Samoa Law Reform Commission, *Sex Offender's Register Final Report*, (2015).

4.35 While the legislative compliance indicators suggest prohibiting the use of *ifoga* and other customary practices as mitigating factors in sentencing sexual violence offences, this is not required by the language of the Article itself.

4.36 The Commission seeks views on whether prohibiting the recognition of an *ifoga* as a mitigating factor in sentencing is an appropriate measure in Samoa's context.

Questions:

1. *Is there a need for greater protection against discrimination against women by private bodies, enforceable through the courts or the Ombudsman?*
2. *Are there any implications of incorporating direct reference to the CEDAW definition of discrimination against women?*
3. *Although there is new legislation in place to target domestic violence, are there further legislative measures that could be taken to strengthen and improve access to domestic violence procedures?*
4. *Should customary reconciliation such as ifoga continue to be taken into account as a mitigating factor in sentencing in cases of sexual offending?*

Article 3: Human rights and fundamental freedoms

Article 3

States Parties shall take in all fields, in particular in the political, social, economic and cultural fields, all appropriate measures, including legislation, to ensure the full development and advancement of women for the purpose of guaranteeing them the exercise and enjoyment of human rights and fundamental freedoms on a basis of equality with men.

4.37 Article 3 of CEDAW, read in conjunction with Article 2, seeks to ensure that State parties actively promote the advancement of women in all fields, and guarantee the enjoyment of their human rights. The extensive list of constitutionally protect rights outlined above shows a broad compliance with Samoa in this regard.

4.38 In order to ensure that these goals are effectively achieved, the CEDAW Committee urges States parties to establish agencies responsible for promoting the advancement and development of women, and independent human rights machinery that allows effective protection of rights and action to be taken against any discriminatory treatment.⁸⁶

Relevant law

Ministry of Women, Community and Social Development

4.39 Samoa has also ensured that there are key government bodies responsible for implementation and progressing further realisation of CEDAW. Such agency is the Ministry of Women, Community and Social Development (**MWCSD**), established under the *Ministry of Women's Affairs Act* 1990. MWCSD works collaboratively

⁸⁶ Committee on the Elimination of Discrimination against Women, Statement by the Committee on the Elimination of Discrimination against Women on its relationship with national human rights institutions, E/CN.6/2008/CRP.1 (2008).

<http://www.ohchr.org/Documents/HRBodies/CEDAW/NHRI_en.pdf> (Accessed 23/06/2015).

⁸⁶ *Constitution of the Independent State of Samoa 1960*, Art. 5.

with its CEDAW Partnership members (**Appendix 1**)⁸⁷ to assist with government planning and the coordination, promotion and the implementation of CEDAW.⁸⁸

4.40 The functions of MWCSO listed in the Act include:

- to encourage, promote and coordinate the work of women and women's committees including relating to primary health care, village and district sanitation, child care, handicrafts, and domestic and community gardens, including gardens for the growing of vegetables;
- to provide training for women in any of their areas of work;
- to promote and assist women with their home economics including cooking, nutritional diet, dressmaking and sewing and matters of a like nature, and training in home economics;
- to promote better conditions for employment of women in both the public and private sectors;
- to advise the Government on women's affairs and to advise on issues to do with women and likewise provide feedback to women's groups;
- to coordinate the activities of Government and non-government organisations involved in or dealing with women's affairs;
- to plan in collaboration with relevant Government departments, programmes whereby women's participation is necessary;
- to promote the interest and welfare of women's committees; and
- to coordinate programmes and project activities for women.⁸⁹

4.41 Over the years, MWCSO has undertaken various community and outreach programs, implemented awareness campaigns and educational courses with the overall aim of educating the public of Samoa about the rights of women, and the responsibilities and obligations under CEDAW. It has also developed and

⁸⁷ Refer to Appendix 1 for the complete list of the CEDAW Partnership chaired by MWCSO.

⁸⁸ Ministry of Women, Community and Social Development, Partnership Committee for the Convention on the Elimination of all forms of Discrimination against Women (CEDAW Partnership) Terms of Reference (2001).

⁸⁹ *Ministry of Women's Affairs Act 1990*, s. 6.

implemented the *National Policy for Women of Samoa*⁹⁰ which ensures that rights under CEDAW are continuously highlighted and addressed.

Women's Advisory Committee and Sui a Tama'ita'i o le Nu'u

4.42 The *Ministry of Women's Affairs Act* also establishes a Women's Advisory Committee within MWCSA.⁹¹ This Committee consists of the Minister as Chairperson, the Chief Executive Officer, 15 women appointed from Upolu, Manono and Apolima, and 15 women appointed from Savaii,⁹² and is responsible for overseeing the full development and advancement of women in Samoa in the political, social, economic and cultural fields.⁹³

4.43 A '*Sui a Tama'ita'i o le Nu'u*' for each traditional village of Samoa⁹⁴ is also established under the Act.⁹⁵ The *Sui a Tama'ita'i o le Nu'u* works collaboratively with Women's Committees in her village to ensure the needs of women in her village are raised and heard by Government.⁹⁶

National Human Rights Institution

4.44 The National Human Rights Institute (**NHRI**) was launched at the end of 2013 within the Office of the Ombudsman to fulfil new functions introduced under the *Ombudsman (Komesina o Sulufaiga) Act 2013*.⁹⁷ The Act added significant new functions, duties and powers to the office of the Ombudsman relating to human rights. One of the key objectives of the Act is to promote and protect the dignity of humankind as the foundation of a fair, just and peaceful society.⁹⁸

⁹⁰ Government of Samoa (GoS). *National Policy for Women of Samoa 2010 – 2015*, Ministry of Women, Community and Social Development: Apia, Samoa, (2010).

⁹¹ *Ministry of Women's Affairs Act 1990*, s. 11.

⁹² *Ibid*, s. 12.

⁹³ *Ibid*, s. 14.

⁹⁴ *Ibid*, s. 16A.

⁹⁵ *Sui Tama'ita'i o le Nu'u* is discussed further under CEDAW Article 14 of the Discussion Paper.

⁹⁶ *Ministry of Women's Affairs Act 1990*, s. 16B.

⁹⁷ *Ombudsman (Komesina o Sulufaiga) Act 2013*. The National Human Rights Institute was officially launched in December 2013.

⁹⁸ *Ibid*, s. 3

4.45 The NHRI is specifically mandated to include consideration of CEDAW.⁹⁹ Its specific functions include promoting human rights, inquiring into systemic breaches of human rights, reviewing legislation for compliance with rights, and intervening in proceedings before the courts when human rights issues arise.

4.46 The NHRI also raises awareness of individual rights and responsibilities amongst the public, in an endeavour to promote good governance and prevent human rights violations in Samoa.¹⁰⁰

4.47 Where there are widespread, systematic or entrenched situations or practices that violate human rights, the Ombudsman may initiate an inquiry.¹⁰¹ For example, following the passing of the Act, investigations were carried out by the Ombudsman in relation to allegations by a female staff member at the Fire and Emergency Services Authority of sexual harassment by a senior figure in authority.¹⁰² The investigations by the Ombudsman noted that it was appropriate to use the CEDAW as guidance given that this is a case dealing with mistreatment of a female staff member.

Issues and discussion

4.48 The recent establishment of the National Human Rights Institute, with functions including the independent monitoring and protection of human rights including those in CEDAW, is a significant step that has addressed a particular recommendation by the CEDAW Committee.¹⁰³

4.49 Whilst MWCSA is established with a clear mandate to promote women's issues under the *Ministry of Women Affairs Act*, the statutory functions of the Ministry encourage and promote gender stereotyping by emphasising particular

⁹⁹ See *Ombudsman (Komesina o Sulufaiga) Act 2013*, s 2 and schedule 1.

¹⁰⁰ Samoa Law and Justice Sector, Establishment of the National Human Rights Institution (NHRI) at the Office of the Ombudsman, Apia, Samoa, (2013).
<http://www.samoaljs.ws/english/index.php?option=com_content&view=article&id=154:establishment-of-nhri-at-omb&catid=59:current-projects&Itemid=95> (Accessed: 18/10/ 2013).

¹⁰¹ *Ombudsman (Komesina o Sulufaiga) Act 2013*, s. 34.

¹⁰² *Ombudsman Investigation v the Commissioner of Fire and Emergency Services Authority WSOM 1* (Accessed: 18/10/ 2013).

¹⁰³ Committee on the Elimination of Discrimination of Women, Fifty-second session 9-27 July 2012, Samoa, UN Doc CEDAW/C/WSM/CO/4-5, para. 17 (27 July 2012).

roles of women as including cooking, dressmaking, sewing and matters of a like nature, and training in home economics.¹⁰⁴ This appears inconsistent with the obligation in article 5 of CEDAW to take appropriate measures to reduce gender role stereotyping, and the particular focus on home-based activities without any equivalent mention of encouraging leadership and public participation may be seen to undermine efforts to meet the obligation to ensure equality of participation in political and public life pursuant to article 7 of CEDAW.

Preliminary Assessment of Legislative Compliance

4.50 The new National Human Rights Institute, combined with the already-established MWCSD, shows that Samoa has a broad enabling legislative framework that is fully compliant with its obligations under CEDAW. However, the specific statutory functions of the MWCSD should be addressed so it does not promote gender stereotyping, contrary to the spirit of CEDAW.

Questions

5. *Are MWCSD, the Advisory Committee, Village Women's Committees and the Sui a Tama'ita'i o le Nu'u effective and sufficient agencies for recognising and promoting women's issues in Samoa?*
6. *Are 'women's issues' approached too narrowly by government and government agencies?*

¹⁰⁴ *Ministry of Women Affairs Act 1990, s. 6(c).*

Article 4: Temporary Special measures

Article 4

1. Adoption by States Parties of temporary special measures aimed at accelerating de facto equality between men and women shall not be considered discrimination as defined in the present Convention, but shall in no way entail as a consequence the maintenance of unequal or separate standards; these measures shall be discontinued when the objectives of equality of opportunity and treatment have been achieved.
2. Adoption by States Parties of special measures, including those measures contained in the present Convention, aimed at protecting maternity shall not be considered discriminatory.

4.51 CEDAW Article 4 introduces the idea of ‘temporary special measures’. These are measures that require a difference in treatment between men and women in order to overcome a disparity or inequality that currently exists.

4.52 The use of temporary special measures is encouraged in order to achieve full compliance with the substantive articles of CEDAW and may be applied in areas where women are underrepresented or disadvantaged, such as in areas of employment, various types of participation in politics, and participation in public life. Temporary special measures must be ‘clearly designed to support the principle of equality and therefore comply with constitutional principles which guarantee equality to all citizens’.¹⁰⁵ Such measures may be a form of affirmative action.

4.53 Temporary special measures by definition encompass a wide variety of legislative, executive, administrative and other regulatory instruments, policies and practices that are designed to serve a specific goal for a set period of time and should be discontinued when the desired results have been achieved and sustained for a sufficient time.¹⁰⁶

¹⁰⁵ Committee on the Elimination of Discrimination against Women, 16th Session 1997, General Recommendation (CEDAW) GR No. 23: *Women in Political and Public Life, Art 4, paragraph 1 of the Convention*, (1997).

¹⁰⁶ Committee on the Elimination of Discrimination against Women, *Ibid.*

4.54 In order for these measures to be lawful, special measures must be exempt from categorization as discrimination. This exemption is therefore a key legislative compliance indicator for this article.¹⁰⁷

Relevant Law

4.55 Measures taken for the “protection or advancement of women” are excluded from the grounds of prohibited discrimination under article 15(3)(b) of the Constitution.

4.56 Samoa has recently adopted a specific temporary measure in relation to political representation: the *Constitutional Amendment Act 2013* established a quota system for representation of women in Parliament. This is discussed in more detail under the discussion on Article 7 of CEDAW on public and political life.

4.57 There do not appear to be any other examples of temporary special measures in legislation, for example in relation to other types of participation in politics or employment.

Issues and Discussion

4.58 The CEDAW Committee raised concerns in its Concluding Observations that temporary special matters were not being systematically applied by Samoa as a strategy necessary to achieve substantive equality of women and men in areas covered by the Convention and recommended that Samoa adopt temporary special measures in all areas in which women are underrepresented and disadvantaged.¹⁰⁸ This is therefore a general recommendation regarding all other articles of CEDAW, and detailed discussions of particular areas where temporary measures may be considered appropriate are included under the relevant articles.

¹⁰⁷ See Compliance Indicator 4.2, Appendix 2.

¹⁰⁸ It also recommended non legislative measures such as setting time-bound targets and the allocation of resources to implement strategies and measures aimed at achieving substantial equality of men and women in all areas, in particular in areas of employment and participation in political and public life. It also recommended raising awareness among Members of Parliaments, Government officials, employers and the general public about the need for temporary special measures, which is not necessarily a legislative issue. Committee on the Elimination of Discrimination against Women, *Samoa*, UN Doc CEDAW/C/WSM/CO/4-5, para. 18-18 (27 July 2012 2005).

Preliminary Assessment of Legislative Compliance

4.59 Samoa appears to be fully compliant with this Article: it has a legislative framework that permits special measures to be implemented for the advancement of women.¹⁰⁹ It has legislated a specific special temporary measure for the purpose of accelerating the achievement of substantive equality in Parliament, addressing the significant under-representation of women in politics. There may be other areas where legislation would be a useful tool for introducing other special temporary measures to achieve substantive equality for women. However, it is also important to note that temporary special measures may be as (or more) effective as policy directives or other measures, and may not necessarily require legislation.

Questions:

7. *Are there other areas in which temporary special measures, conferring a benefit on women in order to accelerate the achievement of substantive equality, would help to achieve de facto equality for women?*
8. *If so, what kind of temporary measure would achieve this?*

¹⁰⁹ Article 15(3) of the Constitution, as discussed above.

Article 5: Gender role stereotyping

Article 5

States Parties shall take all appropriate measures:

- (a) To modify the social and cultural patterns of conduct of men and women, with a view to achieving the elimination of prejudices and customary and all other practices which are based on the idea of the inferiority or the superiority of either of the sexes or on stereotyped roles for men and women.
- (b) To ensure that family education includes a proper understanding of maternity as a social function and the recognition of the common responsibility of men and women in the upbringing and development of their children, it being understood that the interest of the children is the primordial consideration in all cases.

4.60 Article 5 of CEDAW requires State parties to take '**all appropriate measures**' to modify social and cultural patterns where these are based on prejudiced or discriminatory views of women and men. Quite often, unequal outcomes for women and men are in part caused by social norms and practices that are prejudicial towards women, or that reflect particular stereotyped roles for men and women.

4.61 'Appropriate measures' may include public awareness campaigns, education and policy rather than legislation.¹¹⁰ The Compliance Indicator suggests that the Constitution or other legislation should ensure that the principle of equality will take precedence over customary practices that are based on the idea of the inferiority or superiority of either gender, or on stereotyped gender roles.¹¹¹

4.62 Article 5 also requires recognition of the common responsibility of men and women in relation to the upbringing and development of their children, and of the principle that the best interests of a child should be the primary consideration in the determination of all matters regarding that child's upbringing and welfare.

¹¹⁰ See in particular Committee on the Elimination of Discrimination against Women, General Recommendations (CEDAW) GR No. 3: *Education and Public Information Campaigns*, (1987).

¹¹¹ See Compliance Indicator 5.1, Appendix 2.

4.63 Recognition of this latter principle in legislation is a further Compliance Indicator of this Article.¹¹²

A. Equality, Gender-stereotyping and Custom

Relevant Law

4.64 The guarantee of equality and freedom from discrimination is codified in Article 15 of Samoa's supreme law Constitution.¹¹³ Article 15(4) limits the effect of this fundamental right on the operation of any 'existing law' in effect on the day the Constitution came into force.¹¹⁴ Existing laws includes any custom or usage which has acquired the force of law in Samoa¹¹⁵ until repealed by an Act.¹¹⁶ However, it requires the State to direct policy towards progressively removing any such law.

4.65 The Constitution also codifies certain recognition of custom. In Article 100, it provides that Matai titles shall be held in accordance with Samoan custom and usage and with the law relating to Samoan custom and usage. In Article 101, it states that customary land is land held in accordance with Samoan custom and usage and the law relating to Samoan custom and usage, and Article 102 protects any such land from alienation.

4.66 Article 103 provides for a specialised Land and Titles Court with jurisdiction in relation to matai titles and customary land. This Court is established under the Land and Titles Act 1981, and is required to apply custom and usage.¹¹⁷

Issues and Discussion

Fa'a Samoa and 'discrimination'

4.67 Men and women have distinct roles in many aspects of Samoan custom and tradition. These different roles are an integral part of *fa'a Samoa*, particularly in

¹¹² See Compliance Indicator 5.2, Appendix 2.

¹¹³ Article 15, as discussed above under CEDAW discussion on Articles 1 and 2.

¹¹⁴ *Constitution of the Independent State of Samoa 1960*, Art. 15(4).

¹¹⁵ *Ibid*, Art. 111.

¹¹⁶ *Ibid*, Art. 114(a).

¹¹⁷ Land and Titles Act 1981, s. 37.

village life. Although they may be characterised as ‘stereotyped’ based on gender, they are not necessarily in themselves discriminatory or based on any view of superiority or inferiority of either men or women: rather they are part of a broader context of society in which all members have distinct roles determined by their family, age, gender, and title status. The particular roles allocated to different members of a village community form an essential part of identity and sense of belonging, and of what it means to be Samoan. In this context, it is important to recognise that though different roles exist, eliminating these differences may not be appropriate in Samoa’s context. On the contrary, if the law does not allow respect for these roles, this may also risk undermining the dignity of Samoan women.

4.68 However, it is also true that these distinct gender-roles may have flow on effects that are discriminatory in different aspects of social, political and public life of women. For example, a 2-year study recently completed by the National University of Samoa has identified structural aspects of the role of women at the village level as a key cause of the lack of women representatives in national parliament.¹¹⁸ In particular, the practice of some villages in prohibiting women from holding matai titles, is, on its face, discriminatory against women. Likewise formal and informal prohibitions on women matai attending village fono meetings appear discriminatory against women.¹¹⁹

4.69 The CEDAW Committee has also highlighted how traditional attitudes toward the roles of women can contribute to the perpetuation of discrimination against women, including violence against women.¹²⁰

The Constitutional protection from discrimination

4.70 As noted, Article 15 of the Constitution prohibits laws (including customs that have acquired the force of law) that are either expressly or in their practical application discriminatory on the basis of sex. Rules of *Village Fono* that prevent

¹¹⁸ See discussion under Article 7 of the Discussion Paper and Meleisea, M, et al, *Political Representation and Women’s Empowerment in Samoa*, (2015).

¹¹⁹ Meleisea, M, et al, *Political Representation and Women’s Empowerment in Samoa*, (2015).

¹²⁰ See Committee on the Elimination of Discrimination against Women, General Recommendations (CEDAW) GR No. 19: *Violence Against Women* (1992).

women from being matai or participating in *village fono* meetings would appear on their face to breach this provision.¹²¹

4.71 The Supreme Court has made it clear that while custom (such as the exercise of authority of the *Village Fono*) might at times place legal limits on the exercise of constitutional rights such as freedom of religion, the custom will be unconstitutional if it amounts to a denial of that right.¹²²

4.72 However it is unclear how the courts would approach customary law that conflicts with the equality and non-discrimination guarantee in Article 15 of the Constitution, due to the particular exception in Article 15(4). While the Constitution is likely to be held to override customary practices that have not ‘acquired the force of law’, any custom that has ‘acquired the force of law’ and was in place when the Constitution came into force may not be found to be contrary to the Constitution (unless it also results in denial of another right in Part II of the Constitution). This has yet to be tested in Court.

4.73 It is also uncertain how the Courts would deal with a custom that is protected under later constitutional provisions, such as appointment of matai titles or custom relating to land, if such custom was discriminatory.¹²³

4.74 Therefore, even if these customary practices are discriminatory either directly (for example by prohibiting women participating in village fono decisions on land matters) or in effect (for example, in relation to participation in national politics), they *may not* be inconsistent with Article 15.

4.75 However, it is not always clear what the custom is in any given context. Custom is flexible and constantly changing. Protection under Article 15 of the

¹²¹ To the extent that they can be defined as “custom and usage that has acquired the force of law”.

¹²² Hon. Chief Justice Patu Tiavaasue Falefatu Maka Sapolu, *Australasian Law Reform Agencies Conference: General Address*, (2014). And see *Lafaiali’i* etc, Freedom of religion cases.

¹²³ For example, it has been held that certain aspects of the electoral system (matai suffrage) were outside the ambit of Article 15, as parliamentary voting rights were a special subject dealt with elsewhere in the constitution, and such a fundamental change (to universal suffrage) was not intended by the Constitution: See *Attorney General v Olomalu* [1982] WSCA 1, and discussion in *Sia v Peteru* [1998] WSSC 37.

Constitution may turn on whether the particular practice of a village banning women from holding matai titles can be established as the ‘custom’ of that village that is protected under the Constitution, or alternatively, whether the ‘custom’ that is protected is held to be a more general one whereby family are entitled to select their own matai, and the banning of women by the Village Fono is a separate discriminatory act.¹²⁴ As stated by the Honourable Chief Justice, Patu Falefatu Sapolu:¹²⁵

A decision by a Samoan Court where there is conflict between a Samoan law based on individual human rights and a Samoan law based on custom is in effect not just a legal decision on human rights, but also a legal decision on Samoan custom. One of the effects of such as decision by the Courts is to further the process of individualisation of Samoan society and way of life (fa’a Samoa) especially at the village level.

4.76 In addition, the obligation under the proviso of Article 15(4) of the Constitution should be noted, whereby the State is required to direct policy towards progressively removing any such discriminatory law. Arguably, this provision could be the basis for challenging any new law that reinforces any discriminatory custom, even if that custom would otherwise be excluded from the ambit of article 15 under article 15(4).

Preliminary Assessment of Legislative Compliance

4.77 To the extent outlined above, the Article 15 guarantee may not on its own fully comply with the legislative compliance indicators related to CEDAW Article 5 that requires the principle of equality to be given precedence over customary practices that may be discriminatory or based on stereotyped roles of men or women.¹²⁶

¹²⁴ Note that the recent NUS study found that there was no consensus on custom relating to granting of matai titles to women, and the authors stated that their research “has not been able to discover any oral traditions or other historical evidence to support the prohibition of women matai”. They concluded that their findings implied “that there is no real customary basis for such discrimination”: Meleisea, M, et al *Political Representation and Women’s Empowerment in Samoa*, (2015), at p 42 and 44 of Volume 1.

¹²⁵ Hon. Chief Justice Patu Tiavaasue Falefatu Maka Sapolu, *Australasian Law Reform Agencies Conference: General Address*, (2014).

¹²⁶ Compliance Indicator 5.1; see also Compliance Indicator 2.3.

4.78 However, the obligation to direct policy towards progressively removing discriminatory laws (albeit customary law) may already provide an appropriate balance in this context.

4.79 To any extent to which Article 15 might not prohibit a custom that is directly or indirectly discriminatory, ‘appropriate measures’ may be ones that target the particular discriminatory effects rather than any general amendment of Article 15. Particular measures in this regard could allow full legislative compliance with CEDAW Article 5, and would also comply with the Constitutional obligation in Article 15(4) to progressively remove discriminatory laws.

4.80 Such measures may also have a ‘flow down’ effect, influencing the role of women at the village and customary level. Some such measures are discussed under individual articles below. For example, under Article 7 the parliamentary quota system is discussed. Increasing women’s participation in Parliament through a quota could also potentially impact on participation by women in village government. The effect of this will be seen over the next few elections.

B. Upbringing and Development of Children and Other Gender-stereotypes

Relevant Law

4.81 The *Infants Ordinance 1961* ensures the child's welfare shall be paramount in the determination of all matters involving custody or upbringing of that child.¹²⁷ The *Child Care and Protection Bill*¹²⁸ currently under development also provides that the guiding principle for decisions under that Act is that the safety, wellbeing and best interests of the child are paramount.¹²⁹

¹²⁷ *Infants Ordinance 1961*, s. 3.

¹²⁸ As per the standard process, the *Child Care and Protection Bill* is currently being finalised by the Attorney General’s Office with the Ministry of Women Community and Social Development, as the Government Ministry that would administer it. It is important to note that the Bill when tabled may potentially be quite different from the Bill developed by the Commission.

¹²⁹ *Child Care and Protection Bill 2013*, s. 4(1). See footnote 129 page 29 of the Discussion Paper.

4.82 However, some laws regarding the upbringing of children maintain gender-stereotyping. For example, the huge difference between maternity and paternity leave entitlements under the *LEA* (as discussed under Article 11 below), may be seen to reinforce that child upbringing is predominantly a woman's responsibility.

4.83 There are also other areas where gender stereotypes appear to be perpetuated by law, such as the functions of the MWCSD under the *Ministry of Women's Affairs Act*, discussed under CEDAW Article 3, which include assisting women with their home economics and matters of a like nature – perpetuating a stereotyped perception of the role of women.

Preliminary Assessment of Legislative Compliance

4.84 Section 3 of the *Infants Ordinance* ensures that Samoa's legislation is compliant with the legislative Compliance Indicator requiring a child's welfare to be a paramount consideration. Enacting the proposed *Child Care and Protection Bill* will reinforce this commitment.

4.85 However, for full compliance with Article 5, amendments should be considered to remove or minimise the gender stereotyping in the following laws:

- a) the statutory functions of MWCSD under the *Ministry of Women's Affairs Act* (discussed further under Article 3 above);
- b) the paternity leave provisions in the *Labour and Employment Relations Act 2013* (discussed further under Article 11 below);
- c) provisions in the *Accident Compensation Act 1989* that create a presumption that a wife is dependent on her husband,¹³⁰ and
- d) child and spousal maintenance provisions in the *Divorce and Matrimonial Causes Ordinance 1961* and the *Maintenance and Affiliation Act 1967* (discussed further under Article 16 below).

¹³⁰ In cases where the husband's death is caused by accident qualifying under the Act: *Accident Compensation Act 1989*, s 2(2).

Questions

9. *Are there particular areas, beyond those identified above, where traditional roles of men and women contribute to discrimination against women in the exercise of their rights and autonomy? If so, are there particular measures that could be taken to address discrimination in these areas while still respecting fa'a Samoa values?*

10. *Are there laws other than those identified above that perpetuate stereotyped roles of men and women? If so, should they be amended?*

Article 6: Trafficking and exploitation of women

Article 6

States Parties shall take all appropriate measures, including legislation, to suppress all forms of traffic in women and exploitation of prostitution of women.

4.86 CEDAW Article 6 calls for appropriate measures, including legislation, to prevent and address the exploitation of women through trafficking and prostitution.

4.87 Legislative Compliance Indicators include the presence of appropriate criminal laws prohibiting trafficking and sexual exploitation.¹³¹

Relevant Law

Trafficking

4.88 Article 6 of the Constitution relating to the right to personal liberty states:
“No person shall be deprived of his personal liberty except in accordance with law.”

4.89 Furthermore, Article 7 of the Constitution relating to freedom from inhuman treatment states:

“No person shall be required to perform forced or compulsory labour.”

4.90 Part XIII of the *Crimes Act 2013* introduced new offences specifically targeting exploitation through trafficking. The Act criminalises trafficking in people by means of coercion or deception,¹³² and also creates a specific offence for dealing with¹³³ a person under 18 for sexual exploitation, forced labour, or the

¹³¹ See Compliance Indicator 6.1, Appendix 2. The CEDAW Committee recognises that wars, armed conflict and occupation of territories often lead to increased sexual exploitation of women,¹³¹ which is why many of the Legislative Compliance Indicators relate to protecting women from conflict areas, and in peace keeping forces (Indicators 6.2 – 6.4). As this is not particularly relevant to Samoa, we have not focused on these particular indicators in this paper.

¹³² *Crimes Act 2013*, s. 155.

¹³³ Including detaining, confining, removing, receiving, or importing; or inducing him or her to sell, rent or give him or herself.

removal of body parts¹³⁴. These offences are punishable by 14 years imprisonment.

4.91 Although the relevant provisions are gender neutral and do not specifically address trafficking of women, they provide necessary protection against such exploitation.

Prostitution

4.92 Prostitution is criminalised in Samoa, punishable by 3 years imprisonment.¹³⁵ Solicitation, defined as where a person offers or agrees to pay for sexual intercourse or sexual connection, is also an offence, punishable by 5 years imprisonment.¹³⁶

4.93 Living on the earnings of the prostitution of another person,¹³⁷ and the procurement of any woman or girl to have sexual intercourse with any male¹³⁸ are also offences, punishable by 10 years and 7 years imprisonment respectively. The penalties were increased from 3 years by the *Crimes Act 2013*.

4.94 However no male can be convicted of solicitation in respect of any sexual intercourse or sexual connection with his wife,¹³⁹ and it is also not an offence to procure a woman or girl to have sexual intercourse with her husband.¹⁴⁰

Issues and discussion

4.95 The CEDAW Committee noted in its Concluding Observations the lack of data collected on the prevalence of trafficking and sexual exploitation of women in Samoa. Whilst this is not a legislative issue in itself, adequate data is necessary in order to assess whether current provisions are effective, whether such incidents are

¹³⁴ *Crimes Act 2013*, s. 157.

¹³⁵ *Ibid.*, ss. 72-75; Note however that the Committee on the Elimination of Discrimination against Women, General Recommendations (CEDAW) GR No. 19: *Violence against Women*, (1992), stated that where sex work is criminalised, a woman is not protected by employment legislation and is more susceptible to violence.

¹³⁶ *Ibid.*, s. 73(1).

¹³⁷ *Ibid.*, s. 74.

¹³⁸ *Ibid.*, s. 75.

¹³⁹ *Ibid.*, s. 73(2).

¹⁴⁰ *Ibid.*, s. 75.

in fact being investigated and prosecuted,¹⁴¹ and to address the root causes for trafficking and prostitution.¹⁴² Such data is also necessary to ascertain if further legislative measures are necessary to ensure full compliance with CEDAW obligations.

4.96 In relation to the legislative provisions themselves, the wording of the exceptions to the offences of solicitation and procurement appear to focus on marital status rather than the welfare of women or on protection from unlawful sexual conduct. For example procurement is criminalized *unless* it is of a woman to have sex with her husband. A requirement turning on the consent of a woman, rather than on marriage, may give greater recognition of the autonomy and dignity of a woman and would therefore be more in line with the spirit of CEDAW.

4.97 The CEDAW Committee has also noted the particular vulnerability of sex workers where their status is unlawful.¹⁴³ The Committee thus notes that strong criminal laws alone do not always have the effect of protecting women, particularly those forced into sex work through poverty or other means.

4.98 Decriminalisation of consensual commercial sex work can protect women who otherwise do not access health and other services due to the stigma of their unlawful status, and also can be seen to recognise the autonomy of women. However, decriminalisation is not an express requirement of the Article or of the CEDAW Committee in its commentary; nor is it included as a Compliance Indicators in the updated list by UN Women (Pacific). The obligation is to take ‘all appropriate measures’ to suppress the exploitation of prostitution of women, and this needs be assessed as what is appropriate in Samoa’s context.

¹⁴¹ Committee on the Elimination of Discrimination of Women, Fifty-second session 9-27 July 2012, *Samoa*, UN Doc CEDAW/C/WSM/CO/4-5, para. 17 (27 July 2012) para. 25.

¹⁴² Committee on the Elimination of Discrimination against Women, *Ibid.*

¹⁴³ See Committee on the Elimination of Discrimination against Women, General Recommendations (CEDAW) GR No. 19: *Violence against Women*, (1992); and Vedna Jivan and Christine Forster, *Translating CEDAW into Law: CEDAW Legislative Compliance in Nine Pacific Island Countries* (UNDP Pacific Centre and UNIFEM Pacific Regional Office, 2007) p 20. For that reason, the 2007 legislative compliance review recommended that brothel-keeping be decriminalised, so that sex workers are able to access safe working places; and supported the decriminalisation of prostitution (which was not a criminal offence at that point. See p. 301.

Preliminary Assessment of Legislative Compliance

4.99 Samoa's legislation appears generally consistent with Article 6. Sexual exploitation and prostitution are prohibited and penalised through the criminal law, which indicates full compliance with the relevant Compliance Indicators. However, more data collection is necessary to assess the effectiveness of current provisions at protecting women from exploitation, and determining whether or not further legislative provisions are required. Attention should be given to whether any non-legislative safeguards that are in place are sufficient to protect women who are engaged in the sex work industry, so that they are not further exploited through inadequate work conditions and access to healthcare.

Questions

11. Recognising the concern raised by the CEDAW committee about the vulnerability of women when their status is unlawful, is there a need for further legislative provisions to ensure that women engaged in sex work are able to access services and exercise their rights?

Article 7: Public and political life

Article 7

States Parties shall take all appropriate measures to eliminate discrimination against women in the political and public life of the country and, in particular, shall ensure to women, on equal terms with men, the right:

- (a) To vote in all elections and public referenda and to be eligible for election to all publicly elected bodies;
- (b) To participate in the formulation of government policy and the implementation thereof and to hold public office and perform all public functions at all levels of government;
- (c) To participate in non-governmental organizations and associations concerned with the public and political life of the country.

4.100 Article 7 of CEDAW requires States to ensure women and men have equal rights to vote, to run for elections, to participate in the formulation and implementation of policy, to hold public office and perform public functions, and to participate in NGOs.

4.101 General Recommendations by the CEDAW Committee clarifies that this obligation extends to all areas of public life, including:

- a) the exercise of political power (particularly the exercise of legislative, judicial, executive and administrative powers);
- b) all aspects of political administration and the formulation and implementation of policy at international, national, regional and local levels; and
- c) many aspects of civil society, including public boards and local councils, and activities of organizations such as political parties, trade unions, professional or industry associations, women's organizations,

community-based organizations and other organizations concerned with public and political life.¹⁴⁴

4.102 Legislative Compliance Indicators look at equal rights to vote, and at representation in publicly elected bodies and non-Government organisations.¹⁴⁵ Where inequality exists, they also look at whether temporary special measures to advance equality and women's participation have been taken.¹⁴⁶

A. Participation in National Governance

Relevant Law and Context

Electoral Voting

4.103 The legislation in Samoa governing participation in political life at the national level does not on its face discriminate against women. For example, the *Electoral Act 1963* provides for universal suffrage and applies equally to men and women, giving all citizens over the age of 21 the right to vote for the Legislative Assembly.¹⁴⁷

Running for Parliament

4.104 The *Electoral Act* also provides the criteria required for candidates to stand for election to the Parliament. To be eligible a candidate must hold a *matai* title, and his or her application must be accompanied by a declaration by the *Sui o le nu'u* from the village that the title comes from, certifying that he or she meets residency (in Samoa) and service (to the village) requirements.¹⁴⁸ This criteria applies to both men and women.

4.105 The *Constitutional Amendment Act 2013* establishes a quota system for representation of women in Parliament, which may be considered a temporary

¹⁴⁴ Committee on the Elimination of Discrimination against Women, General Recommendation (CEDAW) GR No: 23: *Women in Political and Public Life*, (1997).

¹⁴⁵ See Compliance Indicators 7.1, 7.2 and 7.4, Appendix 2.

¹⁴⁶ See Compliance Indicator 7.3, Appendix 2.

¹⁴⁷ *Electoral Act 1963*, s. 19.

¹⁴⁸ *Ibid*, s. 5 and Form 1A in the Schedule.

special measure.¹⁴⁹ This quota requires 10 per cent of the seats in the Legislative Assembly to be reserved for women. Therefore, if less than five women win seats by the end of the elections, the number of reserved seats will be granted to unsuccessful women candidates, in open constituencies, who receive the highest number of votes in the elections so that there will be 5 women in Parliament.¹⁵⁰ The quota system will be implemented for the first time in the 2016 elections.

Executive and administration

4.106 In relation to executive and administrative functions, women's involvement in government, policy making or in participation in non-Government organisations is not restricted by legislation. In practice, women are engaged in employment at equal or greater rates than men, and the numbers in leadership positions have been steadily growing.¹⁵¹

4.107 Under the *Public Service Act 2004*, employment in the Public Service is required to be governed by merit and not affected by gender.¹⁵² Furthermore, the Public Service Commission is mandated to ensure equal opportunity in employment.¹⁵³

4.108 There appears to be ad hoc provisions in various legislation to ensure there is at least one female representative in Board membership. Some examples include a requirement in the *Prisons Parole Act 1977* that the Prisons Parole Board must include at least one woman.¹⁵⁴ Also, under the *Samoan Language Commission Act 2014*, a representative of the Samoa National Council of Women is to be consulted by the Minister responsible for the Samoan Language Commission, whose views must be taken into account by Cabinet when advising the Head of State to appoint members of the Board for the Commission.¹⁵⁵

¹⁴⁹ Although the enactment of legislation itself may not on its face appear temporary but more concrete, the need for the quota system may be discontinued by way of legislative enactment when its desired results have been achieved.

¹⁵⁰ *Constitution of the Independent State of Samoa 1960*, Art. 44(1B)(b).

¹⁵¹ Ministry of Women, Community and Social Development, *Samoa Country Report 2014 on Progress in Implementing the Pacific Leaders Declaration for Gender Equality* (2014).

¹⁵² *Public Service Act 2004*, s. 18(2)(a).

¹⁵³ *Ibid*, s. 18, see also the discussion under Article 11 below.

¹⁵⁴ *Prisons Parole Board Act 1977*, s. 4(1).

¹⁵⁵ *Samoan Language Commission Act 2014*, s. 8.

Issues and Discussion

4.109 Despite the equality in voting and political candidacy rights under the law, the *de facto*¹⁵⁶ political representation remains low.

4.110 One of the biggest restrictions on women's participation in the national political sphere is that fewer women hold a *matai* title, and that of those women *matai*, many may not participate in village government. Furthermore, of those that do, only a small number stand for election.¹⁵⁷

4.111 The Samoa Census Report 2011 shows that out of the total population of Samoa (187,820), 16,787 people hold *matai* titles, with 89% being male and 11% being female.¹⁵⁸ Research carried out by the Centre of Samoan Studies at the National University of Samoa found that women comprised only 5.5% (735) of all village-based *matai*.¹⁵⁹ They further found that 21 out of 275 villages or sub-villages in Samoa do not permit women to hold a *matai* title, affecting the ability of women to stand for election in 16 out of 41 constituencies.¹⁶⁰ Furthermore, they concluded that in the majority of villages in Samoa, women *matai* are formally or informally discouraged from membership in the village council, and that this would impact on their ability to run a successful election campaign.¹⁶¹

4.112 Currently only 3 out of 49 members of parliament are women, reflective of the consistently low numbers of female candidates since Samoa's independence in 1962. In 2011, out of 159 candidates who ran for the Samoa general elections,

¹⁵⁶ "In fact".

¹⁵⁷ Meleisea, M, et al, *Political Representation and Women's Empowerment in Samoa*, (2015).

¹⁵⁸ Samoa Bureau of Statistics, Population and Housing Census 2011 Analytical Report, (2011) p. 50.

¹⁵⁹ Meleisea, M, et al, *Political Representation and Women's Empowerment in Samoa*, (2015), at pp 20, 27 and 38 Volume 1.

¹⁶⁰ Or do not recognise titles bestowed on women. Meleisea, M, et al, *Political Representation and Women's Empowerment in Samoa*, (2015), at pp 39 and 45 Volume 1. According to the study, villages that do not permit women to hold *matai* are Malie, Maninoa, Saleaamua, Lufilufi, Leulumoega, Samamea (Mulifanua), Saina, Lalomanu, Letogo, Afega, Fasito'o Uta, Vailoa Aleipata, Safune (Fatuvalu), Vaega (Satupaitea), Lalomalava (Vaisaulu), Salailua (Siutu), Samata I Uta, Vaisala, Salailua, Pitonuu, and Moasula.

¹⁶¹ Meleisea, M, et al, *Political Representation and Women's Empowerment in Samoa*, (2015), at pp 41 and 44.

there were only 9 female candidates (6% representation). In 2006, out of 209 candidates, there were 19 female candidates (9% representation).¹⁶² However, only 5 were elected.

4.113 In contrast, in the executive government, Ministry of Finance statistics show that almost a quarter of the 22 government Ministries have female Chief Executive Officers (CEOs). Women also comprise 50% of the Assistant Chief Executive Officer (ACEO) level and represent 22% of the top management level and 39% at the middle management level of the 27 State Owned Enterprises.¹⁶³ Therefore despite women being promoted to middle management level, the same increase is not being seen at the CEO level.

Preliminary Assessment of Legislative Compliance

4.114 The legislation regarding political participation and participation in executive government at the national level is overall consistent with Article 7 of CEDAW and the associated Legislative Compliance Indicators. Appointment to government positions is required to be on merit, women and men have equal voting rights, and there are no legislative barriers to participation on the basis of gender. Furthermore, the 10% Parliamentary quota, although it falls short of the 30% CEDAW target,¹⁶⁴ is nonetheless a very significant step that may accelerate *de facto* equality between men and women in the political sphere.

4.115 There may, however, be a need to address the broader issue underlying the small number of women in Parliament and at the most senior levels of the public service, related to both the small number of women *matai*, and their position as potential candidates. This is addressed further below.

¹⁶² Office of the Electoral Commissioner, *Samoa General Election 2011 – Complete List of Candidates (157)*, 2011. <<http://samoelection.ws/candidates.cfm>> (Accessed 15/06/2015). See also Office of the Electoral Commission, *General Election 2011 Report*, (2011) p. 6.

¹⁶³ Ministry of Finance, *Statistics*, (2014).

¹⁶⁴ United Nations, 52nd Session of CEDAW Concludes-United Nation/28/07/2014; UN Division for the Advancement of Women, Equal Participation of Women and Men in Decision-Making Processes, with Particular Emphasis on Political Participation and Leadership, EGM/EPDM /2005/REPORT <<http://www.un.org/womenwatch/daw/egm/eql-men/FinalReport.pdf>> (Accessed 25/03/2015). The 30% is called 'critical mass' which means, only if women have at least a share of 30% of the national parliament seats will they be able to influence decision making power at this level.

4.116 Greater compliance could also be achieved by a more systemic approach to participation of women in public governance. For example, by legislation requiring gender equity or a minimum number of women as members on public boards.

B. Participation in Village (Local) Government

Relevant Law and Context

4.117 At the village government level, the *Village Fono Act 1990* recognises that decisions on village administration are made by the Village Fono, which consists of *alii and faipule* and governed according to custom.¹⁶⁵ Villages also often have Village Women's Committees that play significant roles in village administration, though these committees are not specifically recognised in statute.

4.118 The *Sui o le nu'u*, which is a representative of each village responsible for carrying out certain administrative tasks and for representing the village to national policy makers, is also established by legislation.¹⁶⁶ While this legislation does not discriminate in terms of gender, the role is most often filled by a male. However, the additional office of *Sui Tama'ita'i o le Nu'u*, was created under the *Ministry of Women Affairs Act*¹⁶⁷ (as discussed under Articles 3 and 13 of the Discussion Paper) ensures participation of women in equivalent roles.

Issues and Discussion

4.119 At the local level, the creation of a specific role of a female village representative is significant. However, this role is paid around 50% less than its (usually male) counterpart.¹⁶⁸ This may be considered to amount to *de facto* discrimination.

¹⁶⁵ *Village Fono Act 1990*, Long title.

¹⁶⁶ *Internal Affairs Act 1995*, s. 15.

¹⁶⁷ *Ministry of Women Affairs Act 1995*, s. 16A.

¹⁶⁸ CEDAW Legislative Compliance Working Group, Samoa Law Reform Commission, *Scribed Document; Discussion into Articles 1-5: MWCSO*, (2014). Their allowance is considered by the Cabinet on the advice of the Minister of Women Community and Social Development.

4.120 In relation to participation by women in village government, research carried out by the Centre of Samoan Studies at the National University of Samoa found that:

- Few women matai sit in village councils;
- Most village councils have no women in their fono or only one or two;
- Women matai are formally or informally discouraged from membership; and
- Some women fear that they will not receive a courteous hearing if they wish to speak and may be discouraged from speaking.¹⁶⁹

4.121 This shows that even though more women are being appointed matai, their participation in local governance is still affected. It should be noted that matai will quite often hold more than one matai title, and that therefore, while a woman's participation in village fono may be limited by the practice of one village for which she has a title, it may not be in others. Therefore the existence of these customs in some villages does not necessarily in every respect remove the ability of women to participate at the local government level. However, in any case, the lower level of participation of women in village governance appears to hinder the effectiveness of women running for national elections and participating equally with their male counterparts, particularly as village recognition and backing is essential for electoral success in a constituency.¹⁷⁰

4.122 Further, while Women's Committees exist and have significant roles in village administration in custom, their role is not recognised in legislation, unlike the Village Fono. Therefore while it is customary for some Village Fono to consult with these Women's Committees in important decisions, in villages where this does not happen, this may affect the ability of women to participate in local governance.

4.123 It is also significant to note that an amendment to the *Village Fono Act* has recently been tabled in Parliament. The *Village Fono Bill* proposes to strengthen the role of the Fono in determining custom for the village, and require *faiga fa'avae* and *i'ugafono* (rules) to be registered. However, they do not give any

¹⁶⁹ Meleisea, M, et al, Political Representation and Women's Empowerment in Samoa, (2015).

¹⁷⁰ Meleisea, M, et al, *ibid*.

legislative recognition to Women's Committees, or to their customary roles in influencing or forming those rules.¹⁷¹

Preliminary Assessment of Legislative Compliance

4.124 There are no legislative barriers to women participating in local governance, and some particular measures – the creation of the *Sui Tama'ita'i o le nu'u* – have been taken in legislation to ensure equal participation. For this reason, Samoa's legislation appears consistent with Article 7 in relation to local governance.

4.125 However, arguably it may be only partially compliant as the impact of the legislative framework still results in discrimination and a material inability of women in some villages to meaningfully participate in both local and national governance.

4.126 The low level of participation of women in village government may also result in a low representation of women running for parliament, despite equal rights set out in the Constitution and in legislation.

4.127 These are important issues which may potentially be addressed in part by legislation, but may also be addressed through non-legislative measures. These measures may include affirmative action, public awareness, education campaigns, and programmes focussed on enhancing the roles of women and changing mind sets of men and women of appropriate decision making roles for women in the village. This is because cultural perceptions appear to be one of the most significant barriers to participation of women in politics.

4.128 A particular legislative measure that should be considered is giving legislative recognition to the role of Women's Committees in the creation of rules under the *Village Fono Act* and to ensure their participation in, or at least consultation by, Village Fono. This may have the effect of reinforcing the custom already in

¹⁷¹ Arguably, this could be said to breach Article 15(4) of the Constitution, as it does not progressively remove discriminatory law, by giving legislative effect only to the role of Fono in determining and applying custom, and not to the customary role of women's committee.

practice in many villages, and respecting the customary role of women as advisors.¹⁷²

Questions

12. *Should consideration of equality of representation of genders be a specified criterion in the appointment of all public governance boards?*
13. *Are there any other legislative provisions that could assist women accessing the highest level of public service positions?*
14. *Is there any reason why the Sui Tama'ita'i o le Nu'u should not be paid on an equal basis to the Sui o le nu'u?*
15. *Should Village Fono be prohibited by legislation from refusing recognition of women matai on the sole basis of gender?*
16. *Should Village Fono be prohibited by legislation from refusing to allow women matai to attend and participate in Village Fono meetings on the sole basis of gender?*
17. *Should the role of Women's Committee be recognised in legislation, for example by requiring Village Fono to consult with committee prior to determining the faiga fa'avae and i'ugafono that are registered?*

¹⁷² This was a recommendation following the NUS study: Meleisea, M, et al, Political Representation and Women's Empowerment in Samoa, (2015).

Article 8: International representation

Article 8

States Parties shall take all appropriate measures to ensure to women, on equal terms with men and without any discrimination, the opportunity to represent their Governments at the international level and to participate in the work of international organizations

4.129 Under Article 8 of CEDAW, the Government is obligated to ensure the presence of women at all levels and in all areas of international affairs.¹⁷³ It secures women's rights to represent their Government at the international level and to participate in the work of international organisations.

4.130 The legislative Compliance Indicator looks to provisions ensuring equal opportunities for representation.¹⁷⁴

Relevant Law and Context

4.131 There are no legislative barriers to women participating and representing government at the international level in diplomatic posts. Decisions about how Samoa is represented internationally are made by way of political appointments by Cabinet. The officers (for example the first secretary) of the mission are also endorsed by Cabinet.

4.132 In relation to delegations of Government officials or non-Government officials representing Samoa at the international level, there is no apparent legal impediment on the selection of a delegation.

Issues and Discussion

4.133 Despite the absence of legislative barriers, 7 out of 9 diplomatic missions are headed by men as Ambassadors, Consul Generals or High Commissioners with 2

¹⁷³ Committee on the Elimination of Discrimination against Women, General Recommendation (CEDAW) GR No. 23: *Article 8 International Level, 16th session, (1997)*.

¹⁷⁴ See Compliance Indicator 8.1, Appendix 2.

missions headed by women.¹⁷⁵ Of the 13 officers currently posted overseas, 8 are female and 5 are male.¹⁷⁶

4.134 Furthermore there is likely to be a disproportionate representation in Government delegations at Ministerial level or Chief Executive level international meetings, due to the fact that there are fewer women in those positions at the national level.¹⁷⁷

Preliminary Assessment of Legislative Compliance

4.135 Samoa's legislation appears consistent with Article 8, as there is no legal impediment for women to represent the Samoan Government at the international level. However, it is important to gain a clear understanding of any barriers that prevent women from filling these positions, in order to assess what, if any, special temporary measures may be most appropriate to address this under-representation.

4.136 The fact that *de facto* equality may not be achieved in some situations shows that this may be an area where special temporary measures such as quotas may be considered appropriate to address low representation by women.¹⁷⁸ The Commission is of the preliminary view that this *de facto* inequality could be appropriately be addressed through non-legislative measures such as policies (which could, for example, include quotas or a mandatory consideration of gender balance in appointment procedures) and education.

Questions

18. *Are there any particular barriers to women taking up opportunities to represent Samoa at the international level?*
19. *Is there need for legislative temporary measures to accelerate de facto equality of representation?*

¹⁷⁵ Ministry of Foreign Affairs and Trade, *List of Samoa Representatives Overseas* (2015).

¹⁷⁶ Ministry of Foreign Affairs and Trade, *ibid.*

¹⁷⁷ Statistics re: CEO and ACEOs.

¹⁷⁸ And Samoa has been urged to do so: See Committee on the Elimination of Discrimination of Women, Fifty-second session 9-27 July 2012, *Samoa*, UN Doc CEDAW/C/WSM/CO/4-5, (2012) para 27(a); and Vedna Jivan and Christine Forster, *Translating CEDAW into Law: CEDAW Legislative Compliance in Nine Pacific Island Countries* (UNDP Pacific Centre and UNIFEM Pacific Regional Office, 2007), at p 302.

Article 9: Nationality

Article 9

1. States Parties shall grant women equal rights with men to acquire, change or retain their nationality. They shall ensure in particular that neither marriage to an alien nor change of nationality by the husband during marriage shall automatically change the nationality of the wife, render her stateless or force upon her the nationality of the husband.
2. States Parties shall grant women equal rights with men with respect to the nationality of their children.

4.137 CEDAW Article 9 recognises that nationality is pivotal to acquiring full participation of women in society.

4.138 CEDAW Committee General Recommendations state that without status as nationals or citizens, women are deprived of the right to vote or to stand for public office and may be denied access to public benefits and a choice of residence.¹⁷⁹

4.139 The CEDAW Committee further noted that nationality should be capable of change by an adult woman and should not be arbitrarily removed because of marriage or dissolution of marriage or because her husband or father changes his nationality.¹⁸⁰

4.140 Compliance Indicators involve legislative provisions that provide women with equal rights to acquire, change and retain their own nationality and that of their children; that are unaffected by marriage.¹⁸¹

Relevant law

4.141 The *Citizenship Act 2004* governs rights of women and men to acquire, change or retain their nationality, and the criteria for nationality of children. The

¹⁷⁹ Committee on the Elimination of Discrimination against Women, General Recommendation (CEDAW) GR No. 21, *Equality in Marriage and Family Relations*, Thirteenth Session, (1994).

¹⁸⁰ Committee on the Elimination of Discrimination against Women, *ibid.*

¹⁸¹ See Compliance Indicators 9.1 – 9.3, Appendix 2.

language in the Act is gender neutral and women have the same rights as men in regards to their own nationality and the nationality of their children. Furthermore, dissolution of marriage does not affect a woman's nationality.

Preliminary Assessment of Legislative Compliance

4.142 Samoa's legislation appears to be fully compliant with article 9 of CEDAW.

There are no legislative barriers in relation to the right of women to acquire, change or retain their nationality and that of their children irrespective of their marital status.

Questions

20. Do you agree that there are no legal barriers in relation to women acquiring, changing or retaining their nationality and that of their children?

21. Are there any practical barriers?

Article 10: Education

Article 10

States Parties shall take all appropriate measures to eliminate discrimination against women in order to ensure to them equal rights with men in the field of education and in particular to ensure, on a basis of equality of men and women:

- (a) The same conditions for career and vocational guidance, for access to studies and for the achievement of diplomas in educational establishments of all categories in rural as well as in urban areas: this equality shall be ensured in pre-school, general, technical, professional and higher technical education, as well as in all types of vocational training;
- (b) Access to the same curricula, the same examinations, teaching staff with qualifications of the same standard and school premises and equipment of the same quality;
- (c) The elimination of any stereotyped concept of the roles of men and women at all levels and in all forms of education by encouraging coeducation and other types of education which will help to achieve this aim and, in particular, by the revision of textbooks and school programmes and the adaptation of teaching methods;
- (d) The same opportunities to benefit from scholarships and other study grants;
- (e) The same opportunities for access to programmes of continuing education, including adult and functional literacy programmes, particularly those aimed at reducing, at the earliest possible time, any gap in education existing between men and women;
- (f) The reduction of female student drop-out rates and the organization of programmes for girls and women who have left school prematurely;
- (g) The same opportunities to participate actively in sports and physical education;
- (h) Access to specific educational information to help ensure the health and well-being of families, including information and advice on family planning.

4.143 Article 10 of CEDAW obligates States Parties to ensure that there are equal opportunities in education for boys and girls. ‘Appropriate measures’ include ensuring that legislation affords equal access to education, with the same facilities and curriculum opportunities, for both boys and girls, including access to financial support for education. The Compliance Indicators focus on

measures to ensure this equal access.¹⁸² A particular Compliance Indicator suggested a legislative prohibition on expulsion from school because of pregnancy, because of the discriminatory impact such expulsion can have on girls' education.¹⁸³

4.144 The Article also requires that, where necessary, special measures including legislation are put in place to ensure *de facto* equality in educational opportunities where formal gender neutral provisions are not achieving this goal. This includes specifically addressing factors that may lead to girls dropping out of education, including pregnancy and unsafe school environments where a girl may be subject to discrimination, harassment, or violence.

4.145 The CEDAW Committee has particularly highlighted this latter issue and has called on Samoa to strengthen awareness-raising, reporting and enforcement to ensure safe educational environments for girls, particularly in rural areas.¹⁸⁴

A. Access to Education

Relevant law

4.146 In addition to Article 15 of the Constitution which provides the right to freedom from discrimination, Samoa's legislation relating to education applies equally to males and females.

4.147 The *Education Act 2009* administered by the Ministry of Education, Sports and Culture (**MESC**), governs enrolment, fees and financial support, attendance, and the monitoring of children when they enter educational institutions.

¹⁸² See Compliance Indicators 10.1, - 10.4, Appendix 2. Compliance Indicator 10.5 also specifically looks at the provision of education on family planning in schools. This is discussed below under article 12 (health).

¹⁸³ See Compliance Indicators, 'old compliance indicator' 10.6; and discussion in Vedna Jivan and Christine Forster, *Translating CEDAW into Law: CEDAW Legislative Compliance in Nine Pacific Island Countries* (UNDP Pacific Centre and UNIFEM Pacific Regional Office, 2007).

¹⁸⁴ Committee on the Elimination of Discrimination of Women, Fifty-second session 9-27 July 2012, *Samoa*, UN Doc CEDAW/C/WSM/CO/4-5, (2012) para. 29.

4.148 Education is compulsory for both boys and girls aged 5 – 14.¹⁸⁵ The *Education Act* requires school attendance to be monitored, and withdrawals and unexplained absences communicated to the relevant authorities.¹⁸⁶ Expulsions are only permitted in accordance with directions of the Chief Executive Officer of MESCS and following consideration of (among other things) the student’s ability to attend another school.¹⁸⁷ The CEO has a power to revoke any decision to expel if he or she is satisfied that the student is willing to behave in an acceptable manner.¹⁸⁸

4.149 All schools are required to uphold the National Curriculum Policy which includes minimum standards of the curriculum set by the Minister responsible for the MESCS¹⁸⁹. The policy imposes the same standards and requires the same content for boys and girls, prioritises values including fairness and respect for diversity,¹⁹⁰ and includes “developing an informed understanding of the issues associated with gender” as an ‘essential skill’ to be developed in schools¹⁹¹. The National Curriculum Policy also recognises that boys and girls may respond differently to different teaching styles and that teaching practice should include a range of teaching styles to ensure effective learning for all.¹⁹²

Issues and Discussion

Access and attendance at school

4.150 Statistics indicate a very close percentage of female students to male students. For example in 2014, 52% of total students enrolled in primary schools were male, and 48% are female. As for secondary schools, 47% were male and 53% were female.¹⁹³ This seems to be an occurring pattern over the years since the

¹⁸⁵ *Education Act 2009*, ss. 4 – 6.

¹⁸⁶ *Ibid*, ss. 11-15. This includes the CEO of MESCS, the Sui o le Nu’u, or the person in charge of the school (if private).

¹⁸⁷ *Education Act 2009*, s. 57.

¹⁸⁸ *Education Act 2009*, s. 57.

¹⁸⁹ *Ibid*, s. 58.

¹⁹⁰ Ministry of Education, Sports and Culture, *National Curriculum Policy Framework* (Jan 2006), at para. [4.2.3].

¹⁹¹ Ministry of Education, Sports and Culture, *ibid*, at para. [4.2.2].

¹⁹² Ministry of Education, Sports and Culture, *ibid*, at para. [4.5].

¹⁹³ Ministry of Education Sports and Culture, *Education Statistical Digest*, (2014), Part 1 p. 3.

earliest available report in 2008 that shows similar statistics.¹⁹⁴ Data on government scholarships for tertiary education also show almost 60% of all scholarships have been awarded (based on merit) to women over the last 5 years.¹⁹⁵

4.151 However, there appears to be a lack of compliance with requirements provided under the *Education Act 2009* in relation to monitoring attendance and dropouts. For example, information on the sudden withdrawal of students from school without adequate reasons from the carer is often not reported to relevant authorities despite legislative requirements to do so.¹⁹⁶ In addition, it has been suggested that decisions to expel students, including pregnant students, are sometimes made by principals without going through Ministry processes.¹⁹⁷ Reporting provides an important safeguard to ensure that children who are removed from the education system either through suspension, expulsion or otherwise, are not removed on a permanent basis or in a manner that is deemed inappropriate (including in a discriminatory manner).¹⁹⁸ However, as this appears to be a compliance issue, rather than an absence of sufficient legislation, the appropriate solution may be non-legislative.

Student pregnancy

4.152 The law does not prohibit the continuation of education of pregnant students, or returning to school after child birth. However, past practice has often been that the pregnant teen is expelled or is encouraged to drop out from high

¹⁹⁴ Ministry of Education Sports and Culture, *Education Statistical Digest*, (2008), p. 3: An interesting observation to note in both 2008 and 2014 statistics is that around 40,000 students are enrolled in Primary Schools yet less than 18,000 students are enrolled in Secondary Schools. This is a concerning statistic that should no doubt be addressed, as was highlighted by the CEDAW Committee in its 2012 report on Samoa. However, it is clear from the above statistics that it is an issue facing boys and girls equally, and thus to a large extent is beyond the scope of this review. There may be reasons for dropping out of school that are specific to girls, however, there is no general information available regarding incidents of dropping out (disaggregated by gender) and the reasons for doing so.

¹⁹⁵ Out of a total of 538 scholarships, 316 went to women. Ministry of Foreign Affairs and Trade, *Scholarships Statistics 2011 – 2015* (2015).

¹⁹⁶ *Education Act 2009*, s. 57 and s. 13.

¹⁹⁷ CEDAW Legislative Compliance Working Group, Samoa Law Reform Commission, *Scribed Document; Discussion into Articles 6-10*, (2014).

¹⁹⁸ *Education Act 2009*, s. 57.

school.¹⁹⁹ Re-entering the education system may also prove to be difficult for teenage mothers. Though the process outlined above involving the CEO allows for potential safeguards against this, there is no specific legislative prohibition on expulsion because of pregnancy. There is however a policy paper in development regarding Student Pregnancy in Education, to encourage and allow pregnant teens and teenage mothers to continue with their education.²⁰⁰

Equal access to educational content

4.153 In terms of equal access to particular educational content, although the same curriculum is now available to both male and female students, there appears to still be some selection bias in relation to the optional courses that students select. For example, at secondary school level, food, textiles and technology still appears to be dominated by female students; whereas design technology (carpentry and metal work) and agricultural science appear to be dominated by male students.²⁰¹ At tertiary level, more male students appear to take science and engineering subjects.²⁰²

Preliminary Assessment of Legislative Compliance

4.154 While acknowledging a lack of available data in some areas, our preliminary view is that the legislative framework appears to be sufficient to allow compliance with CEDAW requirements relating to equal access to education. In the scheme of this framework, agencies such as MESC are best placed to create necessary policy changes that are properly integrated into the existing policies and frameworks, rather than legislative changes that may be unnecessary. Some

¹⁹⁹ Malaea Lauano, Phone Correspondence - Responding to Questions on the Practice with Pregnant Girls in Leifiifi College, Leifiifi College, Apia, Samoa (2014).

²⁰⁰ Developed by MWCS, the policy will be integrated into the MESC's National Violence Free policy for school. Fuimapao Beth Onesemo Tuilaepa, Chief Executive Officer, written correspondence (18 June 2015). See also Division for Women, Ministry of Women, Community and Social Development, *Discussion in Policy Advice on Teen Pregnancy and Education*, (2014).

²⁰¹ MESC Curriculums Division, Telephone Correspondence – Responding to Questions Regarding Gender Specific Courses, (2015).

²⁰² Based on data from degrees undertaken by students receiving government scholarships. For example, in 2015, only 28% (14 out of 60) of female scholarship recipients took engineering or science subjects (at undergraduate or postgraduate level); compared with 50% (21 out of 42) of male scholarship recipients: Ministry of Foreign Affairs and Trade, *Scholarship Statistics 2011 – 2015* (2015).

such non-legislative measures are already in progress, such as the Student Pregnancy in Education policy discussed above.

4.155 Samoa does not have a legislative prohibition on expulsion of pregnant teens, contrary to the relevant specific legislative indicator. It would be possible to introduce a fairly simple legislative amendment to s 57 of the *Education Act* to prohibit expulsion due to pregnancy. This could reinforce a commitment to removing discrimination in girls' access to education and would seem to be consistent with the policies currently in development. . However, providing for this in *legislation* is not necessarily required by the Article, and it may be that the policy under development will be a sufficient measure to achieve compliance with this Article. It may therefore be best to await the outcome of the policy intervention before determining whether any legislative change is necessary.

B. Safe School Environments

Relevant Law

4.156 The *Education Act* requires the Principal and Management Authority of every school to provide a productive and safe teaching and learning environment, and mutual respect among all individuals at the school.²⁰³

4.157 All schools are required to have a discipline policy which must not permit the use of corporal punishment or any form of punishment that may cause harm to, may humiliate, or is intended to humiliate, the recipient.²⁰⁴ Teachers and staff members are expressly prohibited from administering corporal punishment to students at school or during any activity organised by a school.²⁰⁵

Issues and Discussion

4.158 Although legislation is in place that requires schools to provide for safe educational environments, it appears that policies on reporting procedures and harassment in schools are not generally established, or if established, are not well

²⁰³ *Education Act 2009*, s. 22.

²⁰⁴ *Ibid*, s. 23(1)(2).

²⁰⁵ *Ibid*, s. 23(3)(4).

known by students and teachers alike.²⁰⁶ Thus there is no mechanism to practically enforce this provision.

4.159 This is particularly significant in light of the concern raised by the CEDAW Committee of the high number of girls who are victims of sexual abuse and harassment in schools by teachers.²⁰⁷ Relevant to this, the Child Care and Protection Bill currently under development proposes to place a mandatory obligation on teachers and other persons in authority in schools to report any incidents of sexual abuse that they become aware of to the appropriate authority.²⁰⁸

Preliminary Assessment of Legislative Compliance

4.160 Again, in this area, the legislative framework requiring schools to provide safe teaching and learning environments sets up an appropriate framework for compliance with CEDAW. However, unless there are mechanisms to ensure that the legislative guarantee can be practically realised, Samoa may remain only partially compliant with the relevant indicators.

4.161 The development of non-legislative measures such as the ‘National Violence Free Policy’ for schools currently being developed by the MESC²⁰⁹ has potential to go a long way towards meeting CEDAW obligations, particularly if it is conscious of the needs of girls, and includes appropriate mechanisms to allow action to be taken by or on behalf of girls who are unsafe or discriminated against at school. The proposed addition of legislative measures to tackle the worst forms of abuse in schools under the Child Care and Protection Bill will also provide some additional tools to ensure the obligation is met. There would be scope for further legislative measures to support and protect any procedures developed in policy, however, our preliminary view is that this is best to await the outcome and implementation of the policy.

²⁰⁶ CEDAW Legislative Compliance Working Group, Samoa Law Reform Commission, *Scribed Document; Discussion into Articles 6-10*, (2014).

²⁰⁷ Samoa CEDAW Committee, para 28. However, note that it is not clear what information this concern is based on.

²⁰⁸ Child Care and Protection Bill 2013. See footnote 129 page 29 of the Discussion Paper.

²⁰⁹ Due to be completed by the end of the next financial year: MESC Policy Division, Phone Correspondence – Responding to Questions Regarding National Violence Free Policy, (2015).

Questions

22. *Are there any issues relating to education for girls that aren't provided for in the current legislative framework?*

23. *Is there any area in which stronger legislation (as opposed to policy) would be beneficial to ensure the guarantees currently provided are realised? For example, should there be stronger legislative mechanisms for enforcement of safe school environments?*

Article 11: Employment

Article 11

1. States Parties shall take all appropriate measures to eliminate discrimination against women in the field of employment in order to ensure, on a basis of equality of men and women, the same rights, in particular:

- (a) The right to work as an inalienable right of all human beings;
- (b) The right to the same employment opportunities, including the application of the same criteria for selection in matters of employment;
- (c) The right to free choice of profession and employment, the right to promotion, job security and all benefits and conditions of service and the right to receive vocational training and retraining, including apprenticeships, advanced vocational training and recurrent training;
- (d) The right to equal remuneration, including benefits, and to equal treatment in respect of work of equal value, as well as equality of treatment in the evaluation of the quality of work;
- (e) The right to social security, particularly in cases of retirement, unemployment, sickness, invalidity and old age and other incapacity to work, as well as the right to paid leave;
- (f) The right to protection of health and to safety in working conditions, including the safeguarding of the function of reproduction.

2. In order to prevent discrimination against women on the grounds of marriage or maternity and to ensure their effective right to work, States Parties shall take appropriate measures:

- (a) To prohibit, subject to the imposition of sanctions, dismissal on the grounds of pregnancy or of maternity leave and discrimination in dismissals on the basis of marital status;
- (b) To introduce maternity leave with pay or with comparable social benefits without loss of former employment, seniority or social allowances;
- (c) To encourage the provision of the necessary supporting social services to enable parents to combine family obligations with work responsibilities and participation in public life, in particular through promoting the establishment and development of a network of child-care facilities;
- (d) To provide special protection to women during pregnancy in types of work proved to be harmful to them.

3. Protective legislation relating to matters covered in this article shall be reviewed periodically in the light of scientific and technological knowledge and shall be revised, repealed or extended as necessary.

4.162 Article 11 of CEDAW requires States to ensure women the same rights as men to work, with equal employment opportunities, benefits, conditions and treatment in all areas of work. This includes protection from discrimination in selection for employment and in the workplace, as well as equality in remuneration and social security benefits in cases of retirement, unemployment, sickness, and other incapacity to work. According to the Compliance Indicators, these should be set out in legislation.²¹⁰

4.163 Protection in the workplace includes the provision of a safe working environment free from sexual harassment.²¹¹

4.164 Article 11 further requires the prevention of discrimination against women due to pregnancy or maternity leave or marital status and motherhood, to ensure that women are not forced to give up employment in order to attend to their needs during pregnancy and child rearing, or are dismissed as a consequence. The article requires that workplaces provide paid maternity leave, allow reasonable nursing time during work hours for women with young children, and provide measures providing health protection during pregnancy, including protection from harmful types of work. The legislative Compliance Indicators look for these guarantees to be protected in legislation.²¹²

A. Protection from Discrimination and Guarantee of Equality in Employment

Relevant law

4.165 As discussed earlier, Article 15 of the Constitution provides for freedom from discriminatory legislation – where all persons are equal before the law and entitled to equal protection. More specifically however, Samoa has legislation prohibiting discrimination in both the public and private sector workplaces.

²¹⁰ See Compliance Indicators 11.1, 11.4 and 11.5; and also ‘old indicator number’ 11.1 and 11.9, Appendix 2.

²¹¹ See Compliance Indicator 11.3, Appendix 2.

²¹² See Compliance indicators 11.6 – 11.9, Appendix 2.

4.166 The *Public Service Act 2004* specifically governs employment in the public sector. It sets out the principles of employment for the public service which include:

- appointing and promoting employees on the basis of merit;
- equal employment opportunity in the public service;
- provision of a safe environment to work in;
- access to training and development; and
- reasonable remuneration and working conditions.²¹³

4.167 Employment in the private sector is regulated under the *Labour and Employment Relations Act 2013*. This Act requires labour and employment to be consistent with the International Labour Organisation requirements and provides for conditions of employment.²¹⁴

4.168 Under the *Labour and Employment Relations Act* any discrimination, direct or indirect, on the basis of (among other things) gender, sex, sexual orientation, marital status, pregnancy, or family responsibilities is prohibited.²¹⁵ It also specifically requires men and women to be paid the same pay for the same work (equality of pay), and requires equal remuneration for men and women for work of equal value (pay equity).²¹⁶

4.169 Social security benefits available to employees under legislation are not differentiated according to the gender of the worker. Men and women workers are both entitled to social security benefits such as the retirement fund, death benefits and the senior citizens fund.²¹⁷ The framework for social security in relation to incapacity to work is provided under the *Accident Compensation Act 1989*. The Act provides for compensation of workers who suffer personal injury by accident arising out of and in the course of their employment or who contract certain occupational diseases.²¹⁸ It also provides for the compensation (which

²¹³ *Public Service Act 2004*, s. 18(2)(d) – (h).

²¹⁴ *Labour and Employment Relations Act 2013*, Long Title.

²¹⁵ *Labour and Employment Relations Act 2013*, s. 20(2).

²¹⁶ *Ibid*, ss. 19 and 20(4).

²¹⁷ *National Provident Fund Act 1972*, Part XII.

²¹⁸ *Accident Compensation Act 1989*, Long title.

includes damages, allowances, expense, costs or otherwise) of certain dependents of those workers and persons where death results from the injury.²¹⁹ For the purpose of the Act, the wife of a deceased male person and any children under the age of 18 are presumed as dependants.²²⁰

Issues and Discussion

4.170 Despite women being promoted to middle management level, the same increase is not being seen at the CEO level.²²¹ Women appear to take up the majority of the lower level positions, with certificate or diploma qualifications,²²² which may suggest the presence of non-legislative barriers that hinder women's access to highest level positions in both public and private sector.²²³

4.171 In relation to social security legislation, benefits apply only in formal employment. There are no equivalent benefits for informal employment.²²⁴ Although the CEDAW Committee has recommended that Samoa establish a regulatory framework to provide women in informal employment access to social security and other benefits, it should be noted that this is equally a problem for men in informal employment.

Preliminary Assessment of Legislative Compliance

4.172 The recent enactment of the *Labour and Employment Relations Act*, prohibiting discrimination and codifying principles of equality in employment conditions and in pay and pay equity, has ensured that Samoa has a legislative framework for employment that is broadly consistent with the requirements of CEDAW and compliant with the specific legislative Compliance Indicators relating to equality and non-discrimination in employment.²²⁵

²¹⁹ Ibid, Long title.

²²⁰ Ibid, s. 2(2).

²²¹ Note: Data is only available in relation to the Government Ministries.

²²² Public Service Commission, *Human Resource Management Report 2012-2013*, (2012) In Dr M Kerslake, *Where Are The Women In Government Services?* (2014).

²²³ Public Service Commission, *ibid*.

²²⁴ An example of informal employment is women whose livelihood is dependent on weaving and selling fine mats.

²²⁵ Compliance Indicator 11.1, Appendix 2.

4.173 However, there are two areas in which there may still be *de facto* inequality or discrimination, which potentially require legislative measures to achieve full compliance. The first is the *de facto* inequality in employment at the CEO level. The CEDAW Committee has specifically recommended that Samoa implement temporary special measures in this area²²⁶, however, further information about the causes of this inequality is necessary to determine whether any legislative measures are appropriate to address this.

4.174 Second, if women make up a the larger proportion of the informal work sector, the lack of social security and work benefits in this area may disproportionately affect them, and in that way be discriminatory. More information is required to determine whether that is the case.

B. Protection in the Work Place including against Harassment²²⁷

Relevant Law

4.175 The *Occupational Safety and Health Act 2002* provides for the safety, health and welfare of people at work in Samoa and is binding on all employers and employees.²²⁸ It places a duty of care on an employer to take all reasonably practicable steps to protect the safety, health and welfare of all employees at work and to provide and maintain a safe and healthy working environment.²²⁹

4.176 In the public sector, the *Public Service Act* requires employees to comply with a code of conduct that includes a requirement to treat everyone with respect and without harassment.²³⁰ Employers are required to provide a safe working environment, and to ensure employees have access to a simple and fair grievance system.²³¹ Such grievance procedures are provided in the Public Service Commission Discipline Manual.

²²⁶ Committee on the Elimination of Discrimination against Women, Fifty-second session 9-27 July 2012, Concluding Observations, Samoa, CEDAW/C/WSM/CO4-5, (2012) 31(d). See also Compliance Indicator 11.2, Appendix 2.

²²⁷ Compliance Indicator 11.3, Appendix 2.

²²⁸ *Occupational Safety and Health Act 2002*, Long title, and s. 3.

²²⁹ *Ibid*, s. 11.

²³⁰ *Public Service Act 2004*, s. 19.

²³¹ *Ibid*, s. 18.

4.177 The *Labour and Employment Relations Act* provides some protection against harassment in the private sector.²³² An employee can be terminated for misconduct and abuse²³³, which includes sexual or other physical, verbal or mental harassment of employees or the employers.²³⁴ Alternatively an employee can cease his or her service without notice where he or she is subject to physical, mental or verbal abuse or harassment by the employer.²³⁵ Should this occur, the employer is legally obligated to pay any earned wages to that employee.²³⁶

Issues and Discussion

4.178 While the *Labour and Employment Relations Act* provides for some protection against sexual harassment, a mechanism for complaints has not yet been developed by the Ministry of Commerce, Industry and Labour (MCIL), so women may be unable to utilise these protections in practice.²³⁷

4.179 Furthermore, the *Labour and Employment Relations Act* does not provide any specific remedy short of termination for an employee who has been subject to harassment by their employer, nor does it allow an employee to take direct action against another employee for harassment.²³⁸ There is potential for mechanisms and remedies to be introduced in employment legislation (for example, specifically allowing a harassed employee to bring a civil case for the harassment, with damages as a remedy), or in the criminal law (for example, making sexual harassment in the workplace a criminal offence).

Preliminary Assessment of Legislative Compliance

4.180 The legislative framework creates broad obligations on employers in public and private settings that are consistent with CEDAW. However, unless these

²³² *Labour and Employment Relations Act 2013*, s. 2: Harassment means any unwelcome and offensive conduct that includes the fear of harm or serious disturbance to a fellow employee.

²³³ *Ibid*, s. 57(1).

²³⁴ *Labour and Employment Relations Act 2013*, s. 2.

²³⁵ *Ibid*, s. 57(2).

²³⁶ *Ibid*, s. 57(3).

²³⁷ CEDAW Legislative Compliance Working Group, Samoa Law Reform Commission, *Scribed Document: Discussion into Articles 11 – 16*, (2014).

²³⁸ An employee may be dismissed for such harassment: see definition of ‘misconduct’ in s 2. However, this does not provide redress for an employee who has suffered from such harassment.

obligations can be practically realised, Samoa remains only partially compliant with the relevant indicators. As well as non-legislative measures such as a complaints mechanism developed by MCIL, legislation could be put in place to provide specific mechanisms for protection from and remedies for sexual harassment in the workplace under criminal law or as additions to the existing employment legislation.

C. Pregnancy and Maternity²³⁹

Relevant law

4.181 In the private sector, the *Labour and Employment Relations Act* provides specific protection for women during pregnancy and provides for paid maternity leave. A female employee is entitled to four weeks maternity leave with full pay plus two weeks without pay; or six weeks maternity leave on two-thirds of her normal salary.²⁴⁰ This is available to employees who have worked continuously for 12 months or more with the same employer.²⁴¹ A part-time employee also has entitlements in relation to maternity protection and should receive conditions equivalent to those of a comparable full-time employee on a pro rata basis.²⁴²

4.182 In comparison, a male employee is only entitled to a minimum of 5 days paternity leave where he has worked continuously for not less than 12 months for the employer.²⁴³

4.183 Under the *Labour and Employment Relations Act* it is unlawful for an employer to terminate the employment of an employee during or after her pregnancy, except on a ground unrelated to the pregnancy or birth of the child.²⁴⁴ In such case, the onus is on the employer to justify grounds for termination.²⁴⁵

²³⁹ Compliance Indicators 11.6-11.9.

²⁴⁰ *Labour and Employment Relations Act 2013*, ss. 43 - 44.

²⁴¹ *Ibid*, s. 43(3)(b).

²⁴² *Labour and Employment Relations Act 2013*, s. 26(1)(a). This also applies to termination of employment, annual, sick and other leave and paid public holidays.

²⁴³ *Ibid*, s. 46.

²⁴⁴ *Ibid*, s. 45.

²⁴⁵ *Ibid*, s. 45(2).

Women returning to work after taking maternity leave are also entitled to resume their position at the same rate of pay.²⁴⁶

4.184 In the public sector, female public servants (other than temporary employees) are entitled to 8 weeks maternity leave with full pay, and up to a further 18 weeks without pay.²⁴⁷ Wage workers are entitled to 2 weeks maternity leave with pay.²⁴⁸ Male public servants are entitled to 5 working days of paternity leave with full pay in any one year.²⁴⁹

4.185 In relation to breastfeeding or providing milk for a child, women employed in the private sector are entitled to 1 or more daily breaks or a daily reduction in working hours to do so.²⁵⁰ In the public sector, Cabinet has directed that all government Ministries, public bodies and state owned enterprises are required to provide a day care room or space for lactating mothers to breastfeed their newborns should the need arise.²⁵¹

Issues and Discussion

4.186 Again, the recent introduction of the *Labour and Employment Relations Act* has provided many of the requirements of CEDAW Article 11. Minimum requirements for paid maternity leave are provided in both the public and private sector, there are minimum requirements to allow nursing after returning to work, and dismissal due to pregnancy is prohibited by law.

4.187 However, the guaranteed minimum periods of maternity leave in both public and private sectors still fall short of the 14 weeks of paid leave recommended by the CEDAW Committee.²⁵² In addition, while public employers are required to provide day care facilities (by virtue of Cabinet directive, not legislative guarantee), there is no equivalent requirement in the *Labour and Employment*

²⁴⁶ Ibid, s. 45(3).

²⁴⁷ This entitlement is provided in subsidiary legislative instrument, and not in legislation. Public Service Commission, *Working Conditions and Entitlements Manual 2009*, (2009) p 39-40.

²⁴⁸ Public Service Commission, *Working Conditions and Entitlements Manual 2009*, (2009) p 39-40.

²⁴⁹ Public Service Commission, Ibid, p 41.

²⁵⁰ *Labour and Employment Relations Act 2013*, s. 45(4).

²⁵¹ *Cabinet Directive FK (11) 34* (2013).

²⁵² See Committee on the Elimination of Discrimination against Women, Fifty-second session 9-27 July 2012, Concluding Observations, Samoa, CEDAW/C/WSM/CO4-5, (2012) para. 31.

Relations Act for private employers, nor have we identified particular State assistance for the development of childcare facilities for employees in the private sector.

4.188 The very limited provision for mandatory paternity leave may also inhibit women returning to work.

Preliminary Assessment of Legislative Compliance

4.189 Samoa's legislation is now largely consistent with this aspect of CEDAW Article 11: it provides for compulsory maternity leave with pay and without loss of former employment and seniority, as per Article 11.2(b), and some measures have been taken to encourage the provision of child care facilities as per Article 11.2(c).

4.190 However, it is arguable that further legislation may be necessary to meet the 'all appropriate measures' standard, in order to achieve full compliance. In particular, the periods of maternity leave still fall short of CEDAW recommendations, and there is no legislative support for the provision of day care facilities, particularly in the private sector.

Questions

24. *Are there any barriers to a person taking action against discriminatory practices in the workplace?*

25. *Would temporary special measures, such as quotas, be appropriate to overcome the gender imbalance at the highest level of employment?*

26. *Existing social security and benefits do not include men or women working in the informal sector – does this have a disproportionate impact on women justifying different treatment?*

27. *Is sexual harassment in the workplace an issue faced by Samoan women? If so, should there be further legal remedies for sexual harassment in the workplace,*

such as a specific criminal offence, or the specific ability to bring civil cases?

28. Should maternity leave entitlements under the Labour and Employment Relations Act be equivalent to those provided in the public sector (i.e. 8 weeks paid leave, and up to 18 weeks without pay)?

29. Are there any other issues that need to be addressed to allow mothers to continue employment?

Article 12: Health care

Article 12

1. States Parties shall take all appropriate measures to eliminate discrimination against women in the field of health care in order to ensure, on a basis of equality of men and women, access to healthcare services, including those related to family planning.
2. Notwithstanding the provisions of paragraph 1 of this article, States Parties shall ensure to women appropriate services in connection with pregnancy, confinement and the post-natal period, granting free services where necessary, as well as adequate nutrition during pregnancy and lactation.

4.191 Article 12 of CEDAW requires State parties to ensure women have equal access to health services, including those relating to family planning. This involves having access to affordable and appropriate health care and services in relation to pregnancy and the post-natal period in a timely manner, including for rural women. It also requires having health service providers that can undertake health care in a gender sensitive manner, and are trained to recognise and appropriately deal with cases of sexual abuse and violence against women. It provides that women should be made aware of the available health services and their health rights, including through education on sexual and reproductive health.²⁵³

4.192 The Compliance Indicators relating to this article predominantly look to see whether this access and service is provided. However, aside from a broad enabling statutory framework, most of this is a matter of resource allocation and policy – that is, there is no specific legislative measure.²⁵⁴ However, commentary to the article suggests that providing legal and safe access to abortion in appropriate circumstances, although not a specified requirement under the Article, should be looked at as a possible ‘appropriate measure’ for providing adequate access to health services, including family planning

²⁵³ The provision of sexual health and family planning education at school level is also raised as a Compliance indicator in relation to article 10: see Compliance Indicator 10.5, Appendix 2.

²⁵⁴ Compliance Indicators 12.1-12.3, Appendix 2.

services.²⁵⁵ In the 2007 legislative compliance review, this was identified as an area in which Samoa was non-compliant. For this reason, it has been dealt with separately below.

A. Healthcare Services

Relevant law

4.193 Article 15 of the Constitution requires that the State provide healthcare in a non-discriminatory manner.

4.194 Public healthcare services in Samoa are governed under the *Ministry of Health Act 2006*, which establishes a Ministry of Health with responsibility for administering health-related legislation. The Ministry of Health is responsible for creating health care policies, which include policies that specifically address the specific health concerns of women.

4.195 The *National Health Service Act 2014* provides for a National Health Service with responsibility for specified institutions and health services including national and district hospitals, clinical services, dental services and government operated pharmacies.

4.196 Private healthcare services are regulated through the *Healthcare Profession Registration and Standards Act 2007*, which governs the standards and requirements to which private general practitioners must adhere.

Issues and Discussion

4.197 Although the legislation governing provision of health services is not discriminatory against women, the CEDAW Committee raised issues about the availability and access by women to health services in Samoa, particularly those from rural areas.²⁵⁶ This was a particular issue in relation to accessing family

²⁵⁵ See Compliance Indicator 12.1, and Vedna Jivan and Christine Forster, *Translating CEDAW into Law: CEDAW Legislative Compliance in Nine Pacific Island Countries* (UNDP Pacific Centre and UNIFEM Pacific Regional Office, 2007).

²⁵⁶ Committee on the Elimination of Discrimination against Women, Fifty-second session 9-27 July 2012, Concluding Observations, Samoa, CEDAW/C/WSM/CO4-5, (2012) para. 32-33.

planning, maternal health and sexual health services, due to continued stigma surrounding contraceptive use and pregnancy, particularly for young women or unwed mothers.

4.198 Since then, policy efforts have been made to address some of these issues. For example, the Ministry of Health have recently developed a *National Sexual & Reproductive Health Policy (2011-2016)*, focused on improving the reproductive health status of people in Samoa, and particularly targeting women and adolescents through information and education, as well as financing services²⁵⁷. They have also developed the *Safe Motherhood Policy (2000)*, which focuses on achieving safe motherhood by improving social and economic status of women and providing high quality maternal health services to women.²⁵⁸

4.199 Preliminary discussions with the Working Group suggest that some of the issues identified in relation to access to healthcare services (including reproductive health) persist.

4.200 A particular issue highlighted in Working Group discussions related to the autonomy of women in making decisions regarding reproduction. Information received from the Ministry of Health indicated that for any operation (including sterilization of women) to take place, hospital policy required the consent of the husband (or wife) of the patient.²⁵⁹ In relation to sterilization of women or procedures for an abortion where a woman's health is at risk, such policy appears more focussed on marriage than on the welfare, autonomy and dignity of the woman. This is contradictory to the spirit of CEDAW and commentary by the CEDAW Committee.²⁶⁰

²⁵⁷ Ministry of Health, *National Sexual and Reproductive Health Policy 2011-2016*, (2011).

²⁵⁸ Steering Committee, Ministry of Health, *Safe Motherhood Policy 2000* (2000). Women's poor health is linked to their low status in society, their lack of education and poverty and therefore efforts within the region to reduce maternal death have to address social as well as health systems and services. The policy will be reviewed this year (2015).

²⁵⁹ CEDAW Legislative Compliance Working Group, Samoa Law Reform Commission, *Scribed Document; Discussion into Articles 11-16: MOH*, (2014); Ministry of Health's Sexual Reproductive Health Unit.

²⁶⁰ See also CEDAW Article 16(1)(e). The Committee recognises that decisions around whether and when to have children should preferably be made by both spouses together. However, it also recognises that bearing children affects a woman's access to education, employment and other

Preliminary Assessment of Legislative Compliance

4.201 Samoa's legislation appears generally consistent with Article 12 of CEDAW.

The legislation governing the provision of health services does not discriminate against women, and access to these healthcare services is available both to men and women on an equal basis.

4.202 Although issues relating to access to healthcare services continue to be a challenge, no particular issue has thus far been raised with the legislative framework itself. Rather the challenges are a matter of directing resources to the most effective methods of achieving health outcomes, including increased education and awareness about health and health services (including family planning and sexual and reproductive health education), and improved coordination amongst key Ministries to identify barriers that prevent women from accessing health services (ie non-legislative measures). This is being addressed and reviewed through ongoing reviews of policies such as those outlined above.

4.203 Therefore as a preliminary assessment, it appears that Samoa's legislation is partially to fully compliant with indicators relating to access to health care.

B. Abortion

Relevant Law

4.204 The status of abortion in Samoa was recently revisited during the review of the criminal law that led to the enactment of the *Crimes Act 2013* to replace the *Crimes Ordinance 1961*.

4.205 Under the *Crimes Act* procuring an abortion is illegal, except in the case of a pregnancy of not more than 20 weeks where the attending physician is of the

activities, and has significant impact on the woman's physical and mental health. For that reason, the ability of the woman to make a decision about the number and spacing of children should not be impeded by requiring consent of a spouse, parent, partner or the Government: Committee on the Elimination of Discrimination against Women, General Recommendation (CEDAW) GR No: 21: *Equality in Marriage and Family Relations* (1994), paras. 21 – 23.

opinion that carrying a foetus full term will endanger the life of the mother.²⁶¹ Any person procuring a miscarriage, or woman procuring her own miscarriage, or a person who supplies any drug, noxious thing or instrument intended for unlawfully procuring miscarriage, if convicted could be liable for up to 7 years imprisonment.²⁶²

Issues

4.206 The CEDAW Committee has expressed concern about the risk to women's health when abortion is criminalised which may result in women seeking unsafe illegal abortions, risking their life and health. It was further noted that criminal laws, such as those in the *Crimes Act 2013*, that criminalise medical procedures only necessary for women, and that punish women who undergo those procedures, are discriminatory to women as they violate women's access to justice and appropriate healthcare.²⁶³ Furthermore, there may be a risk of infanticide or abandonment of new born babies, due to unwanted pregnancies, and possibly suicide.²⁶⁴

4.207 The CEDAW Committee thus urged Samoa to review criminal laws with a view to removing punitive provisions on women who undergo abortion and provide them with high quality services for the management of complications arising from unsafe abortions.²⁶⁵

4.208 Samoa's law prohibits abortion in all but very narrow circumstances. Information on the prevalence of illegal abortions in Samoa, or reasons for aborting, is not readily available.

²⁶¹ *Crimes Act 2013*, ss. 112 and 116(a)-(b).

²⁶² *Ibid*, ss. 111 and 116.

²⁶³ Committee on the Elimination of Discrimination against Women, General Recommendation (CEDAW) GR No: 24: *Article 12 – Women and Health*, (1999).

²⁶⁴ See Radio New Zealand, *Plane Birth Highlights Plight of Abortion-Seekers in Samoa says New Zealand Doctor*, (2009) < <http://www.radionz.co.nz/international/pacific-news/183289/plane-birth-highlights-plight-of-abortion-seekers-in-samoa-says-new-zealand-doctor> > (Accessed 14/07/2015); Peggy Fairbairn-Dunlop, *Samoan Women: Widening Choices*, (2003) p. 54. There are also several cases of infanticide and/or abandonment of new born babies linked to unwanted pregnancies for example, *Police v Taina* [2014] WSSC 11, *Police v Paulo* [2008] WSSC 3, *Police v Sipaia* [2007], *Police v Rosa Loi* [2005] WSSC 33.

²⁶⁵ Committee on the Elimination of Discrimination against Women, General Recommendation (CEDAW) GR No: 24: *Article 12 – Women and Health*, (1999).

Preliminary Assessment of Legislative Compliance

4.209 As noted above, the status of abortion as a criminal offence does not in itself equate to non-compliance with CEDAW Article 12. However, the effect of the criminal provision on women may be discriminatory, and thus it is relevant to the question of whether all ‘appropriate measures’ have been taken.

4.210 Although the penalty for procuring unlawful miscarriage has been reduced from 14 years to 7 years, consideration should be given whether circumstances in which an abortion is permitted should be expanded, for example in the case of victims of sexual offences, or young girls below a certain age.

4.211 Some risks, such as the risk of infanticide and suicide, may also be addressed through non-legislative measures such as awareness and education to reduce or remove the stigma on teenage pregnancy, provide support services for the woman and her family, and to encourage the continuance of education after pregnancy.

Questions

30. Are there further issues relevant to access to healthcare in Samoa’s context that are not provided for under the existing legislative framework?

31. Would further exceptions to abortion be appropriate to meet Samoa’s obligations under CEDAW? If so, what further exceptions are appropriate and how would they support CEDAW obligations?

Article 13: Economic and social benefits

Article 13

States Parties shall take all appropriate measures to eliminate discrimination against women in other areas of economic and social life in order to ensure, on a basis of equality of men and women, the same rights, in particular:

- (a) The right to family benefits;
- (b) The right to bank loans, mortgages and other forms of financial credit;
- (c) The right to participate in recreational activities, sports and all aspects of cultural life.

4.212 Article 13 of CEDAW aims to promote the autonomy and economic stability of women, to be equal to that of men in Samoa.

4.213 Legislation that indicates compliance with this article include legislative guarantees of equal entitlement to family benefits regardless of marital status, equal rights to receive financial credit, and equal rights to participate in recreational, sporting and cultural life.²⁶⁶

Relevant law

4.214 Article 15 of the Constitution guarantees that any benefits given by the State must not be discriminatory on the basis of sex or family status.

4.215 Legislation specifically states that women retain legal capacity when married.²⁶⁷ Consequently, there are no legislative barriers preventing women from accessing bank loans, mortgages or financial credit, or from participating in recreational activities. Samoa does not have a general social security system, and systems that are in place (for example accident compensation, senior citizen benefits²⁶⁸) are available to both men and women on an equal basis.

²⁶⁶ Compliance Indicators 13.1-13.3, Appendix 2.

²⁶⁷ Samoa Act 1921, s. 360.

²⁶⁸ *Accident Compensation Act 1989. National Provident Fund Act 1972, Part XII.*

Preliminary Assessment of Legislative Compliance

4.216 Samoa appears to be fully compliant with Article 13, as men and women have the equal access to social security benefits, finance, and social and cultural participation.

Questions:

32. Are there any practical barriers preventing women exercising their rights in accessing finance or benefits, for example limiting access to security for loans?

Article 14: Rural women and the non-monetized economy

Article 14

1. States Parties shall take into account the particular problems faced by rural women and the significant roles which rural women play in the economic survival of their families, including their work in the non-monetized sectors of the economy, and shall take all appropriate measures to ensure the application of the provisions of the present Convention to women in rural areas.
2. States Parties shall take all appropriate measures to eliminate discrimination against women in rural areas in order to ensure, on a basis of equality of men and women, that they participate in and benefit from rural development and, in particular, shall ensure to such women the right:
 - (a) To participate in the elaboration and implementation of development planning at all levels;
 - (b) To have access to adequate health care facilities, including information, counselling and services in family planning;
 - (c) To benefit directly from social security programmes;
 - (d) To obtain all types of training and education, formal and non-formal, including that relating to functional literacy, as well as, inter alia, the benefit of all community and extension services, in order to increase their technical proficiency;
 - (e) To organize self-help groups and co-operatives in order to obtain equal access to economic opportunities through employment or self-employment;
 - (f) To participate in all community activities;
 - (g) To have access to agricultural credit and loans, marketing facilities, appropriate technology and equal treatment in land and agrarian reform as well as in land resettlement schemes;
 - (h) To enjoy adequate living conditions, particularly in relation to housing, sanitation, electricity and water supply, transport and communications.

4.217 Article 14 of CEDAW requires States parties to address the specific needs and challenges faced by rural women in addressing these rights. It recognises that rural women face particular challenges due to their participation in informal

work, and their ability to access centralised services. This is particularly relevant in Samoa, as almost 80% of women in Samoa live in rural areas.²⁶⁹

4.218 Legislative Compliance Indicators are any specific legislative measures that promote substantive equality for rural women, including participation in and benefit from rural development.²⁷⁰

Relevant law

4.219 There are no legislative barriers to rural women accessing their rights.

4.220 As discussed earlier in the Paper, the *Ministry of Women's Affairs Act* established the office of *Sui Tama'ita'i o le Nu'u*²⁷¹ for each traditional village of Samoa. This office plays a particularly important role in ensuring the needs of rural women are heard and addressed by central and local Governance bodies. The duties of the *Sui Tama'ita'i o le Nu'u* include:

- Promoting the advancement of women in her village;
- Ensuring the free flow of information between Village Women's Committees and Government (including on the progress of implementation and monitoring of programs, activities and development projects);
- Collaborating closely with the Village Women's Committee and *Sui o le Nu'u* on promoting wellbeing and health of the village;
- Promoting good governance in women's committees and other women's groups; and
- Performing duties that promote and support government policy related to the work on the advancement of women in the village.²⁷²

²⁶⁹ Samoa Bureau of Statistics, *Population and Housing Census Analytical Report* (2011) http://www.sbs.gov.ws/index.php?option=com_advlisting&view=download&fileId=1388&Itemid=164 (Accessed 23 April 2014).

²⁷⁰ See Compliance Indicator 14.1, Appendix 2.

²⁷¹ *Ministry of Women Affairs Act 1990* (Samoa), s. 16A.

²⁷² *Ibid*, s. 16B.

Issues and Discussion

4.221 While there are no legislative barriers, there may be practical and situational barriers that limit the ability of rural women to access rights as guaranteed under CEDAW. The CEDAW Committee expressed concern at the disadvantaged position of rural women in Samoa, in their experience of poverty, difficulties in gaining access to health and social services, and a lack of participation in community-level decision-making.²⁷³ They also raised concern at the ‘prevalence of discriminatory customs and traditional practices that prevent rural women in particular from inheriting or acquiring ownership of land and other property’.²⁷⁴

4.222 Due to the prevalence of traditional village life in rural areas, rural women are particularly susceptible to the issues discussed under Article 7 in relation to participation in village governance. Further, rural women are more likely than non-rural women to depend on informal work, and so are unprotected by the employment legislation, and more susceptible to being affected by the lack of social security benefits.

4.223 The 2007 Legislative Compliance Review stated that temporary special measures should be incorporated into both the Constitution and legislation to guarantee substantive equality for rural women. None have since been adopted.

Preliminary Assessment of Legislative Compliance

4.224 Samoa’s legislation appears consistent with Article 14 of CEDAW.

4.225 The Commission’s preliminary view is that many of the access issues require non-legislative rather than particular legislative solutions. There are already many government and non-government initiatives contributing greatly in this area.²⁷⁵

²⁷³ See Committee on the Elimination of Discrimination against Women, Fifty-second session 9-27 July 2012, Concluding Observations, Samoa, CEDAW/C/WSM/CO4-5, (2012) para 34.

²⁷⁴ Committee on the Elimination of Discrimination against Women, *Ibid.*

²⁷⁵ For example, there are numerous NGOs that focus on providing rural and vulnerable people the prospect of earning an income where they reside, with the resources from their environment that they can access and utilize accordingly: Samoa Chamber of Commerce & Industry, *Women in Business Development Inc (WIBDI)*, (2010) <http://www.samoachamber.ws/ChamberofCommerceWomeninBusinessDevelopment/tabid/5090/la>

4.226 However, there may be some general legislative measures that would have a big impact on rural women. For example, measures relating to recognition of women's roles in village governance could have a particular impact for rural women.

Questions

33. Are there other particular issues for rural women that could be addressed through legislation?

[nuage/en-US/Default.aspx](http://www.wibdi.org/nuage/en-US/Default.aspx) (Accessed 19/06/2015). Women in Business Development Inc (WIBDI) is one such organisation, which has managed to carry out their projects with 1,000 families covering 176 villages in Samoa. Each project is primarily to alleviate poverty amongst villagers by encouraging them to generate income and participate in creating a sustainable village economy through supervision and support, and assisting access to microfinance and to global markets.

Article 15: Equality before the law

Article 15

1. States Parties shall accord to women equality with men before the law.
2. States Parties shall accord to women, in civil matters, a legal capacity identical to that of men and the same opportunities to exercise that capacity. In particular, they shall give women equal rights to conclude contracts and to administer property and shall treat them equally in all stages of procedure in courts and tribunals.
3. States Parties agree that all contracts and all other private instruments of any kind with a legal effect which is directed at restricting the legal capacity of women shall be deemed null and void.
4. States Parties shall accord to men and women the same rights with regard to the law relating to the movement of persons and the freedom to choose their residence and domicile.

4.227 Article 15 of CEDAW requires States to ensure that women have equal standing in the law as men. This means that women must have equal capacity in criminal and civil matters, including equal ability to enter into contracts, and administer property and estates. It also requires women to have equal ability access courts and tribunals.

4.228 Article 15 also requires States to ensure that women have equal right to choose their residence and domicile.

4.229 Indicators for legislative compliance with this article include a constitutional guarantee of equality,²⁷⁶ legislative provision for equal treatment before courts and in legal transactions,²⁷⁷ and guarantees of particular rights on an equal basis to men²⁷⁸. A further Compliance Indicator is a specific provision that nullifies all contracts and instruments that limit women's legal capacity.²⁷⁹

²⁷⁶ Compliance Indicator 15.1, Appendix 2.

²⁷⁷ Compliance Indicator 15.2, Appendix 2.

²⁷⁸ Including freedom of movement and rights of migrants to have their families join them: Compliance Indicator 15.4 and 15.5, Appendix 2.

²⁷⁹ Compliance Indicator 15.3, Appendix 2.

Relevant Law

4.230 Article 15(1) of the Constitution guarantees equality before the law and equal protection under the law. Article 4(1) of the Constitution enables any person, male or female, to apply to the Supreme Court to enforce this guarantee, and the exercise of any other Part II right in an equal manner, including freedom of movement under Article 13(d). In addition, the *Samoa Act 1921* states specifically that the legal capacity of women does not change on marriage.²⁸⁰

4.231 There is no legislation in Samoa which denies women the right to enter into contracts or purchase or administer property, which in any event would be contrary to Article 15 of the Constitution.

4.232 There is also no specific legislation that nullifies instruments purporting to limit women's legal capacity.

Preliminary Assessment of Legislative Compliance

4.233 Samoa's legislation appears to be fully compliant with Article 15 of CEDAW.²⁸¹ Women in Samoa can enter into contracts, bring legal proceedings, and have freedom to move and choose their place of residence.

²⁸⁰ *Samoa Act 1921*, s. 360.

²⁸¹ Samoa is fully compliant with 4 out of 5 of the legislative indicators. While there is no specific legislative provision providing that contracts or private instruments directed at restricting the legal capacity of women are null and void in accordance with article 15(3), we are not aware of any incidents of such instruments.

Article 16: Marriage and family life

Article 16

1. States Parties shall take all appropriate measures to eliminate discrimination against women in all matters relating to marriage and family relations and in particular shall ensure, on a basis of equality of men and women:

- (a) The same right to enter into marriage;
- (b) The same right freely to choose a spouse and to enter into marriage only with their free and full consent;
- (c) The same rights and responsibilities during marriage and at its dissolution;
- (d) The same rights and responsibilities as parents, irrespective of their marital status, in matters relating to their children; in all cases the interests of the children shall be paramount;
- (e) The same rights to decide freely and responsibly on the number and spacing of their children and to have access to the information, education and means to enable them to exercise these rights;
- (f) The same rights and responsibilities with regard to guardianship, wardship, trusteeship and adoption of children, or similar institutions where these concepts exist in national legislation; in all cases the interests of the children shall be paramount;
- (g) The same personal rights as husband and wife, including the right to choose a family name, a profession and an occupation;
- (h) The same rights for both spouses in respect of the ownership, acquisition, management, administration, enjoyment and disposition of property, whether free of charge or for a valuable consideration.

2. The betrothal and the marriage of a child shall have no legal effect and all necessary action, including legislation, shall be taken to specify a minimum age for marriage and to make the registration of marriages in an official registry.

4.234 Article 16(1) of CEDAW requires States to ensure that laws provide for the equality and autonomy for women in all matters regarding the formation and welfare of the family, including laws relating to marriage, divorce, child custody, property division and inheritance.

- 4.235 Compliance indicators include legislation that affords women the right to choose a spouse with full and free consent²⁸² and the right to choose a family name;²⁸³ and prohibits discriminatory marital issues such as bigamy.²⁸⁴
- 4.236 Article 16(2) specifically requires marriage of children to be prohibited by legislation.²⁸⁵ Legislation should also provide a minimum age - recommended to be 18 for both males and females²⁸⁶ - and for a registry of marriages.²⁸⁷
- 4.237 Legislation should also provide the same rights and responsibilities with men during marriage and at its dissolution,²⁸⁸ the same rights and responsibilities towards children, and equal rights in relation to family property.²⁸⁹ In particular, divorce should be available on a no-fault basis,²⁹⁰ and laws regarding the financial consequences of dissolution should not be contingent on fault. Legislation should include maintenance provisions that recognise need and non-financial contributions to the family.²⁹¹
- 4.238 Article 16 is discussed in detail in CEDAW Committee General Recommendations 21 and 29, where the Committee emphasises that areas of family law are often not subject to the same scrutiny as areas of ‘public’ aspects of life, and thus are areas where sex- and gender-based discrimination may be allowed to continue. States were urged to address discrimination in these areas with the same scrutiny that is given to the ‘public’ aspects of life.²⁹²

²⁸² Compliance Indicator 16.1, Appendix 2.

²⁸³ Compliance Indicator 16.3, Appendix 2.

²⁸⁴ See Compliance Indicators, ‘old indicator number’ 16.6 – see Appendix 2.

²⁸⁵ See also Compliance Indicator 16.12.

²⁸⁶ In accordance with the UNCRC. See Compliance Indicator 16.13.

²⁸⁷ See also Compliance Indicator 16.14.

²⁸⁸ Compliance Indicator 16.2, Appendix 2.

²⁸⁹ Compliance Indicator 16.4, Appendix 2. In relation to Article 16(1)(e), see discussion under article 12 above.

²⁹⁰ Vedna Jivan and Christine Forster, *Translating CEDAW into Law: CEDAW Legislative Compliance in Nine Pacific Island Countries* (UNDP Pacific Centre and UNIFEM Pacific Regional Office, 2007), p. 36.

²⁹¹ See Compliance Indicators, ‘old indicator number’ 16.10 and 16.16 and 16.17; and Committee on the Elimination of Discrimination against Women, General Recommendation (CEDAW) GR No: 29: *Article 16 – Economic Consequences of Marriage, Family Relations and their Dissolution* (2013), paras. 39 – 48; and GR No: 21: *Equality in Marriage and Family Relations* (1994), paras. 30 – 33.

²⁹² Committee on the Elimination of Discrimination against Women, General Recommendation (CEDAW) GR No: 29: *Article 16 – Economic Consequences of Marriage, Family Relations and their Dissolution* (2013), para. 18.

A. Marriage²⁹³

Relevant law

4.239 Under the *Divorce and Matrimonial Causes Ordinance 1961*, a marriage is void where by reason of duress or mistake or insanity or otherwise, there was at the time of the marriage and absence of consent by either party to the marriage to the other party.²⁹⁴ Bigamy is an offence under the *Crimes Act 2013*.²⁹⁵

4.240 All marriages in Samoa must be registered on an official register.²⁹⁶ Under the *Marriage Ordinance 1961* the minimum age for males to marry is 18, and for females is 16.²⁹⁷ For young adults to be married, prior consent must be given by a parent or a guardian. For a young man, consent is to be given if he is under the age of 21, and for a young woman if she is under 19.²⁹⁸

4.241 Either party to the marriage is able to choose their family name and register any change under the *Births, Deaths and Marriages Registration Act 2002*.²⁹⁹

Issues and Discussion

4.242 The differentiation of ages of marriage and of the parental consent requirement was highlighted by the CEDAW Committee as a particular issue for Samoa.³⁰⁰ It could be considered discriminatory and open to challenge in the Supreme Court on the basis of Article 15 of the Constitution.

4.243 The *Marriage Ordinance* also states that no marriage is invalidated by any breach of these (or other) requirements,³⁰¹ which raises a possible issue if children are married even younger. However, marriages must be solemnised in

²⁹³ Compliance Indicators 16.1, 16.2, 16.3, 16.12, 16.13, 16.14; and 'old indicator number' 16.6. See Appendix 2.

²⁹⁴ *Divorce and Matrimonial Causes Ordinance 1961*, s. 9.

²⁹⁵ *Crimes Act 2013*, s. 78.

²⁹⁶ *Births, Deaths and Marriages Registration Act 2002*, ss. 55 and 69.

²⁹⁷ *Marriage Ordinance 1961*, s. 9.

²⁹⁸ *Ibid*, s. 10.

²⁹⁹ *Births, Deaths and Marriages Registration Act 2002*, ss. 24 and 68.

³⁰⁰ Committee on the Elimination of Discrimination against Women, Fifty-second session 9-27 July 2012, Concluding Observations, Samoa, CEDAW/C/WSM/CO4-5, (2012) para. 39.

³⁰¹ *Marriage Ordinance 1961*, ss. 9 and 10.

the presence of a marriage officer, and subsequently registered, and it is an offence for a marriage officer to solemnise marriages contrary to the provisions of the Act.³⁰² This provides protection from child marriages.

Preliminary Assessment of Legislative Compliance

4.244 Samoa's legislation is fully compliant with the majority of the legislative indicators guaranteeing equal rights to marriage.

4.245 However, the differential treatment on the basis of sex in regards to the minimum age of marriage and parental consent is contrary to the recommendations of the CEDAW Committee and to Samoa's commitments under the UNCRC.³⁰³ Amending the minimum age so that it is the same for both parties would require a simple amendment. The *Child Care and Protection Bill* currently in development proposes to legislate a minimum age for children to marriage as 18 years, which overrides the existing law.³⁰⁴ A further amendment to alter parental consent requirements so that they are the same for both genders should also be considered.

B. Divorce, Alimony, Maintenance and Division of Property³⁰⁵

Relevant law

4.246 The *Divorce and Matrimonial Causes Ordinance* 1961 governs separation and dissolution of marriage. This Act was amended in 2010 to provide no-fault grounds for divorce, enabling either party to a marriage to apply for divorce on grounds that the parties have separated and lived separately for a continuous minimum period of 12 months.³⁰⁶

4.247 The amendments in 2010 also resulted in expediting divorce where domestic violence is involved. If the Court is satisfied that a party to the marriage is the

³⁰² Ibid, ss. 15 and 30.

³⁰³ Raising this age has also been recommended by the Commission in its CRC Final Report: Samoa Law Reform Commission, *Child Care and Protection Legislation Final Report 11/13* (2013).

³⁰⁴ Child Care and Protection Bill 2013, s. 52. See footnote 129 page 29 of the Discussion Paper.

³⁰⁵ Compliance Indicators 16.5, 16.6, 'old indicator numbers' 16.10, 16.11, and 16.17. See Appendix 2.

³⁰⁶ *Divorce and Matrimonial Causes Ordinance* 1961, s. 7(2).

subject of domestic violence, the Court may hold that the marriage has broken down irretrievably even if the parties have not separated or lived separately for a continuous period.³⁰⁷

4.248 Part III of the *Divorce and Matrimonial Causes Ordinance* provides for alimony, maintenance, and custody, and governs the division of property at the dissolution of marriage. It provides that the Court may make such orders for alimony and maintenance as it considers appropriate, and specifically provides that this may include orders for maintenance by a husband to his wife for the duration of her life.³⁰⁸ The *Maintenance and Affiliation Act 1967* also provides for applications for maintenance by one spouse against another.³⁰⁹ While either spouse can apply, if the other fails to provide adequate maintenance. However, an order will only be made against a wife if her husband is destitute *and* can prove that she is of adequate means to support him; while an order can be made against a husband unless he proves he does not have sufficient means.

4.249 In considering what orders may be appropriate, the Court must take into account a variety of factors set out under the Act,³¹⁰ which explicitly include the needs, income, earning capacity, property and financial resources of the person to be paid maintenance, as well as financial contributions made directly or indirectly by a party to a marriage or to the children of a marriage, the commitments of each party to the marriage and to supporting any other person, and any special circumstances which would result in injustice or undue hardship to any person.³¹¹

4.250 In respect of property of the parties to a marriage, the Court may declare interests in property and make orders as it considers appropriate altering the interests of the parties to a property.³¹² In doing so, the Court specifically may take into account non-financial contributions made to the welfare of the family,

³⁰⁷ *Ibid*, s. 7(3).

³⁰⁸ *Ibid*, s. 22. Is likely to be interpreted broadly taking into account circumstances of particular family and fairness, aware of discrimination: see *Arp v Arp* [2008] WSSC 35.

³⁰⁹ *Maintenance and Affiliation Act 1967*, ss. 16 and 17.

³¹⁰ *Divorce and Matrimonial Causes Ordinance 1961*, s. 22A.

³¹¹ *Ibid*, s. 22A.

³¹² *Divorce and Matrimonial Causes Ordinance 1961*, s. 22B.

and the needs of the party.³¹³ This would seem to include and order in favour of the wife for occupation of the family home when appropriate.³¹⁴

Issues and Discussion

4.251 The amendments to the broad powers of the Courts under the *Divorce and Matrimonial Causes Ordinance* in 2010 created express guides to the exercise of those powers that promotes consistency with CEDAW obligations. However, there is continued use of gendered maintenance provisions. Although they are for protection of women, these provisions reinforce the stereotyped role of the husband as primary financial provider for the family. These may be largely unnecessary, as the broad, gender neutral powers may be broad enough to allow appropriate orders regardless of gender. The list of necessary considerations is all written in gender-neutral language, and includes recognition of, for example, non-financial contributions.

4.252 It should be noted that in most cases, rights to land will be governed by custom rather than the legislation.

Preliminary Assessment of Legislative Compliance

4.253 Samoa's legislation is broadly consistent with the Article 16 requirements. It is compliant the Compliance Indicators relating to the effects of dissolution of marriage and division of property. However, gender-specific maintenance provisions remain. Although these are for the protection of women, and do not render the legislation non-compliant, amending these so that they are gender neutral should be considered in light of this Article and the obligation under CEDAW Article 5 to remove legislation that promotes gender-stereotyping.

³¹³ *Ibid*, s. 22B(2).

³¹⁴ For example, situations of domestic violence. See Compliance Indicator 16.11, Appendix 2. This is not explicitly stated in the legislation, but orders for occupation were available under the common law in Samoa (see *Arp v Arp* [2008] WSSC 35; *Lauofo v Croker* [1993] WSSC 5). The power to alter interests under s 22B seems, if anything, broader than the common law.

C. Custody, maintenance and responsibility for children³¹⁵

Relevant Law

4.254 Under the *Infant Ordinance 1961*, the Court is required to regard the welfare of the child as the first and paramount importance in any matter regarding the custody or upbringing of the child.³¹⁶ That Act also provides for adoption and guardianship orders to be granted to suitable persons in appropriate circumstances. These provisions have no gender component, and can be made by in favour of any person.³¹⁷

4.255 The Court also has broad powers to order maintenance payments for children against a parent of the child.³¹⁸ This includes the ability for an unmarried mother to claim maintenance payments from the father of the child, if she applies for an affiliation order against that father within 6 years of the birth of the child.³¹⁹

Issues and Discussion

4.256 The legislative Compliance Indicator of compliance with Article 16(1)(f) requires legislation affording men and women the same rights and responsibilities towards children *irrespective of marital status*.³²⁰ Samoa's legislation does give an unmarried mother the ability to apply for an affiliation order and maintenance payments against the child's father, however, the without such an order the obligations towards a child born out of wedlock under the law rest with the mother, and not the father.³²¹ While there is clearly circumstances where establishing the parenthood of a child by court order is useful, it need not turn on marriage. The legislation could, for example, apply to all parents named on the birth certificate of a child, regardless of marital status, unless there is some order to the contrary.

³¹⁵ Compliance Indicators 16.7, 16.9, 16.10; 'Old indicator number' 16.16. See Appendix 2.

³¹⁶ *Infant Ordinance 1961*, s. 3.

³¹⁷ See *ibid*, ss. 4 and 7 – 8.

³¹⁸ *Maintenance and Affiliation Act 1967*, ss. 12 – 14. Parent includes the mother, and, *if the child is legitimate*, the father of the child. If born out of wedlock, it does not include the father. Maintenance payments continue until the child is 16, or, if engaged in education or training, until the child is 19.

³¹⁹ *Maintenance and Affiliation Act 1967*, ss. 9 – 11.

³²⁰ See Compliance Indicator 16.9, Appendix 2.

³²¹ See also *Infant Ordinance 1961*, s. 2: "parent" includes the mother of a child born out of wedlock, but not, specifically, the father.

Preliminary Assessment of Legislative Compliance

4.257 Samoa's legislation appears partially compliant with this aspect of Article 16.

The legislation allows for equal rights in relation to custody, adoption and guardianship of children. However, in relation to children born to unmarried persons, equal responsibility is only enforceable where particular court orders are sought by the mother within a certain timeframe. The default position lays responsibility with the mother, but not the father. This could be amended to depend not on marriage, but, for example, on parenthood as established either by birth certificate or, where unidentified on the birth certificate, by court order.

D. Family Court³²²

Relevant Law

4.258 A new Family Court established under the *Family Court Act 2014* now has jurisdiction over any matters of proceedings under the *Family Safety Act 2013*, *Maintenance and Affiliation Act 1967*, *Divorce and Matrimonial Causes Act 1961*, and *Marriage Ordinance 1961*.³²³ The Act sets out that the Court must, as far as possible, promote conciliation³²⁴ and that parties must engage in alternative dispute resolution prior to commencing proceedings before the Family Court, unless the circumstances of the case make it inappropriate.³²⁵

Issues and Discussion

4.259 The establishment of a Family Court was urged by the CEDAW Committee as a way of ensuring rights in relation to family life were realised. This has now been achieved.

4.260 The duty on the Court to promote conciliation and to require alternative dispute resolution between the parties may be seen to indicate non-compliance with the Article, as it can interfere with the autonomy of women where there are

³²² Committee on the Elimination of Discrimination against Women, Fifty-second session 9-27 July 2012, *Concluding Observations*, Samoa, CEDAW/C/WSM/CO4-5, (2012) para 39; and Compliance Indicators, 'old indicator number' 16.14. See Appendix 2.

³²³ *Family Court Act 2014* (Samoa), s. 8.

³²⁴ *Ibid*, s. 6.

³²⁵ *Ibid*, s. 7.

unequal power relations, particularly in cases with a history of domestic violence.³²⁶ However, the obligation to promote conciliation only applies ‘so far as possible’, and the requirement for alternative dispute resolution may be dispensed with if the Court is satisfied that it would be “inappropriate”.³²⁷ This may be sufficient to strike a balance between the benefits of limiting the use of litigation in family matters, while still allowing enough latitude for these provisions not to be used in situations of unequal power relations.

Preliminary Assessment of Legislative Compliance

4.261 For the above reasons our preliminary view is that legislation in relation to the Family Court is compliant with CEDAW, despite the obligation on the court to promote conciliation and require alternative dispute resolution in family cases.

Questions

34. *Should the minimum age of marriage be amended to be 18 for both men and women?*
35. *Should the requirement of parental consent to marriage apply equally to both genders? If so what age is appropriate for this requirement to end?*
36. *Should spousal maintenance provisions be amended to be gender neutral, rather than containing specific, potentially broader, provisions applying to the maintenance of wives by husbands?*
37. *Should the default obligations under child maintenance and custody laws be amended to explicitly depend on parenthood, as established by birth certificate or court order, rather than marriage of the parents?*
38. *Should alternative dispute resolution and conciliation be limited to an opt-in basis, or is the current law (an obligation to engage with ADR, combined with*

³²⁶ See Compliance Indicators, ‘old indicator number’ 16.14, Appendix 2; and commentary in Vedna Jivan and Christine Forster, *Translating CEDAW into Law: CEDAW Legislative Compliance in Nine Pacific Island Countries* (UNDP Pacific Centre and UNIFEM Pacific Regional Office, 2007), p 36.

³²⁷ See *Family Court Act 2014* (Samoa), ss. 6 and 7.

an ability to dispense with the obligation if it is inappropriate) sufficient to protect the autonomy of women, particularly in circumstances where there is a history of domestic violence?

5. Open Dialogue

5.1 The issues and/or existing mechanisms developed to encompass and mediate the progress of women's right are by no means limited to what is presented in this paper. The Commission is merely providing a skeleton framework so that its key stakeholders as well as the general public have a guiding document in which to clearly express and/or clarify the views or opinions on how the Government of Samoa can achieve its international obligation to be compliant with the CEDAW Convention.

6. LIST OF QUESTIONS FOR CONSULTATIONS

Specific Questions:

Articles 1 and 2

- 1) *Is there a need for greater protection against discrimination against women by private bodies, enforceable through the courts or the Ombudsman?*
- 2) *Are there any implications of incorporating direct reference to the CEDAW definition of discrimination against women?*
- 3) *Although there is new legislation in place to target domestic violence, are there further legislative measures that could be taken to strengthen and improve access to domestic violence procedures?*
- 4) *Should customary reconciliation such as ifoga continue to be taken into account as a mitigating factor in sentencing in cases of sexual offending?*

Article 3

- 5) *Are MWCSO, the Advisory Committee, Village Women's Committees and the Sui a Tama'ita'i o le Nu'u effective and sufficient agencies for recognising and promoting women's issues in Samoa?*
- 6) *Are 'women's issues' approached too narrowly by government and government agencies?*

Article 4

- 7) *Are there other areas in which temporary special measures, conferring a benefit on women in order to accelerate the achievement of substantive equality, would help to achieve de facto equality for women?*
- 8) *If so, what kind of temporary measure would achieve this?*

Article 5

9) *Are there particular areas, beyond those identified above, where traditional roles of men and women contribute to discrimination against women in the exercise of their rights and autonomy? If so, are there particular measures that could be taken to address discrimination in these areas while still respecting fa'a Samoa values?*

10) *Are there laws other than those identified above that perpetuate stereotyped roles of men and women? If so, should they be amended?*

Article 6

11) *Recognising the concern raised by the CEDAW committee about the vulnerability of women when their status is unlawful, is there a need for further legislative provisions to ensure that women engaged in sex work are able to access services and exercise their rights?*

Article 7

12) *Should consideration of equality of representation of genders be a specified criterion in the appointment of all public governance boards?*

13) *Are there any other legislative provisions that could assist women accessing the highest level of public service positions?*

14) *Is there any reason why the Sui Tama'ita'i o le Nu'u should not be paid on an equal basis to the Sui o le nu'u?*

15) *Should Village Fono be prohibited by legislation from refusing recognition of women matai on the sole basis of gender?*

16) *Should Village Fono be prohibited by legislation from refusing to allow women matai to attend and participate in Village Fono meetings on the sole basis of gender?*

17) *Should the role of Women's Committee be recognised in legislation, for example by requiring Village Fono to consult with committee prior to determining the faiga fa'avae and i'ugafono that are registered?*

Article 8

18) *Are there any particular barriers to women taking up opportunities to represent Samoa at the international level?*

19) *Is there any need for legislative temporary measures to accelerate de facto equality of representation?*

Article 9

20) *Do you agree that there are no legal barriers in relation to women acquiring, changing or retaining their nationality and that of their children?*

21) *Are there any practical barriers?*

Article 10

22) *Are there any issues relating to education for girls that aren't provided for in the current legislative framework?*

23) *Is there any area in which stronger legislation (as opposed to policy) would be beneficial to ensure the guarantees currently provided are realised? For example, should there be stronger legislative mechanisms for enforcement of safe school environments?*

Article 11

24) *Are there any barriers to a person taking action against discriminatory practices in the workplace?*

25) *Would temporary special measures, such as quotas, be appropriate to overcome the gender imbalance at the highest level of employment?*

26) *Existing social security and benefits do not include men or women working in the informal sector – does this have a disproportionate impact on women justifying different treatment?*

27) *Is sexual harassment in the workplace an issue faced by Samoan women? If so, should there be further legal remedies for sexual harassment in the workplace, such as a specific criminal offence, or the specific ability to bring civil cases?*

28) *Should maternity leave entitlements under the Labour and Employment Relations Act be equivalent to those provided in the public sector (i.e. 8 weeks paid leave, and up to 18 weeks without pay)?*

29) *Are there any other issues that need to be addressed to allow mothers to continue employment?*

Article 12

30) *Are there further issues relevant to access to healthcare in Samoa's context that are not provided for under the existing legislative framework?*

31) *Would further exceptions to abortion be appropriate to meet Samoa's obligations under CEDAW? If so, what further exceptions are appropriate and how would they support CEDAW obligations?*

Article 13

32) *Are there any practical barriers preventing women exercising their rights in accessing finance or benefits, for example limiting access to security for loans?*

Article 14

33) *Are there other particular issues for rural women that could be addressed through legislation?*

Article 16

34) *Should the minimum age of marriage be amended to be 18 for both men and women?*

- 35) *Should the requirement of parental consent to marriage apply equally to both genders? If so what age is appropriate for this requirement to end?*
- 36) *Should spousal maintenance provisions be amended to be gender neutral, rather than containing specific, potentially broader, provisions applying to the maintenance of wives by husbands?*
- 37) *Should the default obligations under child maintenance and custody laws be amended to explicitly depend on parenthood, as established by birth certificate or court order, rather than marriage of the parents?*
- 38) *Should alternative dispute resolution and conciliation be limited to an opt-in basis, or is the current law (an obligation to engage with ADR, combined with an ability to dispense with the obligation if it is inappropriate) sufficient to protect the autonomy of women, particularly in circumstances where there is a history of domestic violence?*

General Questions:

- 1) *Is legislation in place that corresponds to the relevant legislative compliance indicator?*
- 2) *If YES, does it achieve the aim of the CEDAW article/obligation? How?*
- 3) *If NO, are there other, non-legislative, measures in place that achieve the aim of the article/obligation?*
- 4) *If YES, what are they?*
- 5) *If NO, would legislation help achieve the aim of the CEDAW article/obligation, or would other non-legislative measures be appropriate?*
- 6) *What social or cultural factors may protect women in Samoa from discrimination, if any?*

APPENDIX 1

CEDAW Partnership Members:

- 1) Ministry of Commerce, Industry and Labour;
- 2) Ministry of Education Sports and Culture;
- 3) Ministry of Finance;
- 4) Ministry of Foreign Affairs and Trade;
- 5) Ministry of Health;
- 6) Ministry of Police and Prisons;
- 7) Ministry of Women, Community and Social Development;
 - a) Division for Research, Policy & Planning;
 - b) Division for Women; and
 - c) Division for Youth.
- 8) National Council of Women;
- 9) Office of the Attorney General;
- 10) Pan Pacific & South East Asia Women's Organisation (PPSEAWA);
- 11) Public Service Association;
- 12) Public Service Commission;
- 13) Samoa Bureau of Statistics;
- 14) Sāmoa Women's Committee Development Organization;
- 15) Sāmoa Land Corporation;
- 16) Sāmoa Law Reform Commission;
- 17) Sāmoa Umbrella for Non Government Organisations;
- 18) Sāmoa Victim Support Group;
- 19) Women In Business Development Inc.; and
- 20) Yazaki EDS Sāmoa.

APPENDIX 2

Article	Compliance Indicator	Corresponding Authority	Legislative provisions (Samoa)	Legislative Compliance (preliminary assessment)	Comments
Art. 1	<p>1.1 Does the State party's constitution guarantee human rights and fundamental freedoms to men and women equally, irrespective of a woman's marital status, including in the political, economic, social, cultural, civil or any other field?</p> <p>These rights and freedoms include:</p> <ul style="list-style-type: none"> a) the right to life; b) the right not to be subject to torture or to cruel, inhuman or degrading treatment or punishment; c) the right to equal protection according to humanitarian norms in time of international or internal armed conflict; d) the right to liberty and 	<p>Article 1</p> <p>GR19</p>	<p>Constitution 1960</p> <ul style="list-style-type: none"> • Article 5 - Right to life, • Article 6 - Right to personal liberty, • Article 7 - Freedom from inhumane treatment, • Article 8 - Freedom from forced labour, • Article 9 - Right to a fair trial, • Article 10 - Rights concerning criminal law, • Article 11 - Freedom of religion • Article 12 - Rights concerning religious instructions, • Article 13 - Rights regarding freedom of speech, assembly, association, movement and residence, • Article 14 - Rights regarding property, • Article 15 - Freedom from discriminatory legislation and right to equality <p>Public Service Act 2004</p> <ul style="list-style-type: none"> • Section 18(2)(e) - reasonable remuneration and 	<p>Partial</p>	<p>While there is no specific right to equal protection according to humanitarian norms, this is covered by the general right to equality in article 15 combined with other rights to life, liberty and freedom from inhumane treatment.</p> <p>There is also no specific right to the 'highest standard of healthcare'.</p>

	<p>security of person;</p> <p>e) the right to equal protection under the law;</p> <p>f) the right to equality in the family;</p> <p>g) the right to the highest standard attainable of physical and mental health;</p> <p>h) the right to just and favourable conditions of work.</p>		<p>working conditions.</p> <ul style="list-style-type: none"> • Section 18(2)(h) - provision of a safe environment to work in. 		
Art. 2	6.1 Is there a constitutional guarantee of substantive equality between men and women?		<p>Fundamental rights are guaranteed to every person under the Constitution (see above).</p> <p>Article 15(1) of the Constitution provides that all persons are equal before the law and entitled to equal protection under the law.</p> <p>Furthermore, section 15(2) of the Constitution expressly prohibits any law, executive or administrative action of the State that would otherwise restrict any person's privilege on the grounds of sex.</p>	No	Article 15 of the constitution guarantees 'equality before the law' and 'equal protection under the law', but this does not specifically guarantee equal outcomes or benefits.
Art. 2	2.2 Does the State party's constitution codify the principles of equality of men and women and non-discrimination?	Art. 2(a)	Article 15 of the Constitution , above.	Yes	

Art. 2	2.3 Do the laws of the State party contain otherwise appropriate legislation that incorporates the principles of equality and non-discrimination with an overriding and enforceable status, including where the government is decentralised?	Art. 2(a) GR28(31)	Article 15 of the Constitution is supreme law, and has overriding status. Article 4 guarantees that rights are enforceable.	Partial	Article 15 incorporates both principles and is supreme law, but its application to Village Fono and matai authority has not been tested in court.
Art. 2	2.4 Has the State party modified, abolished or repealed existing laws, regulations customs or practices that directly or indirectly effects discrimination against women?	2(f), (g)	<p>In recent years, Samoa has implemented the following legislative changes, among others:</p> <ul style="list-style-type: none"> - 10% Quota ensuring parliamentary seats for women (article 441A of the Constitution); - Gender neutral language in all legislation; - Broadening the definition of rape under the <i>Crimes Act 2013</i> (section 52(1)); - Providing for the issuance of Protection Orders for victims of domestic violence irrespective of marital status (<i>Family Safety Act 2013</i>, s 4 and <i>Divorce and Matrimonial Causes Ordinance 1961</i>, s26A – 26D - Abolishing archaic requirements for being granted divorce, and enabling an application for divorce on grounds that the marriage has broken down irretrievably and parties have lived separately for a continuous period of not less than 12 months. 	Partial (ongoing)	

Art. 2	2.5 Does the breadth of the State party's anti-discrimination provisions encompass direct and indirect discrimination against women?	GR28(16)	<p>Article 15(2) of the Constitution provides:</p> <p>(2) Except as expressly authorised under provisions of this Constitution, no law and no executive or administrative action of the State shall, either expressly or in its practical application, subject any person or persons to any disability or restriction or confer...any privilege or advantage on grounds only of...sex..”</p> <p>The use of the phrase ‘either expressly or in its practical application’ captures indirect discrimination.</p>	Yes	
Art. 2	2.6 Has the State party recognized intersecting forms of discrimination against women (intersectionality), their compound negative impact on women concerned, and prohibited them? This includes factors such as race, ethnicity, religion or belief, health status, disability, age, class, caste, sexual orientation and gender identity.	GR28(18)	<p>Article 15 of the Constitution also prohibits discrimination on the grounds of descent, language, religion, political or other opinion, social origin, place of birth, or family status (as well as on the grounds of sex).</p> <p>This gives some legal recognition to intersecting forms of discrimination.</p>	Partial	There is no specific prohibition on discrimination on the grounds of disability, health status, sexual orientation or gender identity.
Art. 2	2.7 Does the State party's anti-discrimination legislation protect women against discrimination by public authorities and institutions,	2(d) GR(31)	<p>Article 15 of the Constitution protects women against discrimination by public authorities.</p> <p>The Ombudsman (<i>Komesina o Sulufaiga</i>) Act 2013 also protects against discriminatory action.</p>	Partial	No ability to take specific action against private actors outside of the employment context.

	as well as private actors?		<p>As well as the powers in relation to discriminatory decisions by public institutions, the National Human Rights Institute has powers under Part 4 to investigate and report on situations of widespread or systematic breaches of human rights, including the right to freedom from Discrimination.</p> <p>Section 19 of the <i>Labour and Employment Relations Act 2013</i>, (LERA) prohibits sex discrimination in private employment:</p> <p>guaranteeing women remuneration at equal rate as men for similar work (does not apply if variation is genuinely due to material difference between the two – other than the difference of sex).</p>		
Art. 2	2.8 Can women invoke the principle of equality in support of complaints alleging acts of discrimination by public officials or private actors?	GR28(34)	<p>Article 4 of the Constitution allows any person to apply to the Supreme Court to enforce the rights contained in the constitution, including the Article 15 right to equality and freedom from discrimination.</p> <p>The Ombudsman Office in Samoa has the power to investigate administrative decisions made by public officials that affects a person in the person’s personal capacity, on the basis that that</p>	Partial	<p>Courts determine that Article 15 is to be read as a whole, encompassing equality and freedom from discrimination (see <i>Samoa Party v Attorney General</i> [2010] WSCA 4, at [27]).</p> <p>However, there are no specific provisions for complaints of discrimination against private actors (unless such discrimination can be seen as a situation of widespread or</p>

			<p>decision was unreasonable, unjust, oppressive, or discriminatory</p> <p>The Ombudsman may start investigation after receipt of a complaint, even if the complaint is not against any administrative decision.</p> <p>(sections 18 and 28, Ombudsman Act 2013)</p>		<p>systemic abuse of human rights, and thus the subject of an Ombudsman Office inquiry under Part 4 of the Ombudsman Act 2013).</p>
Art. 2	<p>2.9 Does the State party's legislation provide appropriate remedies for women who have been subject to discrimination? Remedies should include different forms of reparation, such as:</p> <ul style="list-style-type: none"> a) monetary compensation b) restitution c) rehabilitation d) reinstatement e) satisfaction (e.g., public apologies and guarantees of non-repetition) f) changes in relevant laws and practices 	<p>2(b) GR28(32)</p>	<p>Article 4 of the Constitution provides that the Supreme Court has power to make "all such orders as may be necessary and appropriate to secure the applicant the enjoyment of any of the rights conferred under the provisions of this Part".</p> <p>The Ombudsman after investigation finding in favour of the complainant, would report the opinion and reasons to the appropriate Ministry or organisation and make recommendation if:</p> <ul style="list-style-type: none"> - the matter should be referred to the appropriate authority for further consideration; or - the omission should be rectified; or - the decision should be cancelled or varied; or - any practice on which the decision, recommendation, act, or omission was based should be altered; or - any law on which the decision, recommendation, act, or omission was based 	<p>Partial</p>	<p>There are a wide range of remedies available for women who have been subject to discrimination by public authorities.</p> <p>However, there are very few direct remedies available where a woman has been subject to discrimination by a private actor: unless that discrimination is widespread and systemic (and thus falls under Part 4 of the Ombudsman Ordinance), there is no direct ability to get compensation for discrimination.</p>

			<p>should be reconsidered; or</p> <ul style="list-style-type: none"> - reasons should have been given for the decision; or - any other steps should be taken. <p>(Section 28(2), Ombudsman Act 2013)</p> <p>Under Part IV of the Ombudsman Act 2013 the Ombudsman (through the NHRI) may recommend changes in relevant laws in order to promote human rights (s 33); and where systemic human rights abuses have been identified, can recommend that victims are entitled to compensation, or that a person should do particular things to redress the violation (s 36).</p>		
Art. 2	2.10 Does the State party provide comprehensive measures to address domestic violence, including legislation, criminal and civil law remedies, awareness-raising, education and training, shelters, counselling for victims of violence and work with perpetrators?	GR19(24)(r) Case no. 5/2005	<p>Family Safety Act 2013 – an Act to provide for greater protection of families and the handling of domestic violence and related matters.</p> <p>It provides protection order procedures in courts as well as gives the Police the obligation to assist and inform a complainant of their rights and to prosecute accordingly.</p> <p>(see 2.11 below, for information)</p>	Yes	
Art. 2	2.11 Does the State party obligate law enforcement officials to act with due diligence to prevent,	GR19(9) Case no. 5/2005	<p>Duties of law enforcement officials:</p> <p>In instances of domestic violence where physical or sexual abuse is involved, the Police Officer is</p>	Yes	

	<p>investigate or respond to domestic violence, and to provide adequate sanctions for the officials failure to do so?</p>	<p>obligated to do all things necessary to ensure that a charge or information is laid with the Court to commence prosecution of the matter in Court and not withdraw the charge or information accordingly. (s.16 FSA)</p> <p>Where any other form of domestic violence is involved, if the Police Officer considers the appropriateness to deal with the case (in accordance with applicable guidelines) he or she must have the matter referred to an authorised counselling agency and monitor the progress accordingly, or lay a charge or information to commence prosecution particularly in cases of repeated offending of a similar nature.</p> <p>Sanctions for failure of officials:</p> <p>Failure by a Police Officer to comply with an obligation imposed in terms of the FSA constitutes misconduct for the purposes of the Police Service Act 2009. Furthermore, unless the Commissioner directs otherwise in any specific case for good cause, disciplinary proceedings must be issued against any Police Officer who allegedly failed to comply with an obligation under the FSA.</p>		
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Art. 2	2.12 Do women have recourse to affordable, accessible and timely remedies, and legal aid assistance where necessary, in the pursuit of justice for discrimination and domestic and other forms of gender-based violence?	GR28(34) Case no. 5/2005	The Family Safety Act 2013 allows applications for protection orders to be made at any time outside of court hours, allowing timely remedies where necessary (s 4(6)). There is no cost for applications under that act There is no specific legal aid legislation in Samoa, however, the right to a fair trial under Article 9(4)(c) of the Constitution requires legal aid where necessary, and this is granted by the court on an <i>ad hoc</i> basis.	Yes	While access to courts including through legal aid is an ongoing concern for Samoa, this is a broader resourcing issue, and not an issue in terms of legislative compliance with this indicator.
Art. 2	2.13 Has the State party undertaken measures to ensure that migrant women victims of domestic violence have effective access to services related to protection against domestic violence and to justice, including interpretation or translation of documents?	CEDAW/ C/53/D/31/ 2011	No specific legislation		This does not necessarily require legislative measures beyond those available above.
Art. 2	2.14 Do women have access to a fair hearing by a competent and independent court or tribunal?	GR28(34)	Article 9(1) of the Constitution states that every person is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established under the law. In relation to domestic violence issues, the Family Court Act 2014 creates a new specialised	Yes	

			Family court to hear disputes in this area.		
Art. 2	2.15 Is there mandatory prosecution and imposition of penalties for domestic and other forms of violence against women that include the abuse of human rights such as right to life and physical integrity?	GR19(24(t)) GR28(34)	Section 16, <i>Family Safety Act 2013</i> requires police to do all things necessary to ensure a charge is laid in any case where a report of domestic violence involves physical or sexual abuse.	Partial	The <i>Family Safety Act 2013</i> Only deals with domestic violence. While domestic violence is widely defined, this obligation still does not apply in situations of violence against women in non-domestic settings.
	2.16 Does the State party mandate vigilant and speedy prosecution of perpetrators of domestic violence, inherently recognizing that a woman's right to life and physical and mental integrity supersedes the rights of perpetrators?	Case no. 5/2005, at 12.3(b)	No specific legislation. The <i>Family Safety Act 2013</i> allows interim protection orders to ensure safety can be guaranteed in a timely manner.	Partial	Vigilant and speedy prosecution is not mandated in legislation.
Art. 2	2.17 Do domestic courts apply the law consistent with the State party's obligations under CEDAW?	CEDAW/ C/52/D/32/ 2011	N/A (non-legislative).	n/a	This is not a legislative measure. However, it would be possible to make such consideration by domestic courts mandatory in determining, for example, cases under the <i>Family Safety Act 2013</i> .
Art. 2	2.18 When deciding custody and visitation, do domestic courts take into account instances of	CEDAW/ C/52/D/32/ 2011	<i>Infants Ordinance 1961 s.3</i> provides that where the issue of the custody or upbringing of a child shall be determined by the Court, the welfare of	Yes	The proposed Child Care and Protection Bill currently in development also gives greater powers to courts in situations

	violence, ensuring that the rights and safety of the victim and children are not jeopardized?		the child shall have first and paramount importance.		where a child is at risk of harm. Under that proposed legislation, the child's safety, well being and interests are to be the paramount consideration.
Art. 2	2.19 Are protective orders available to women in situations of violence, regardless of marital status, that: a) ease the burden of proof in favour of the victim? b) do not place undue administrative and legal burdens on the applicant?	Case no. 2/2003 Case no. 20/2008	Family Safety Act 2013 s.4 provides that any person may apply to the court for a protection order. He/she may be represented by a legal counsel, village representative, child welfare officer, counsellor, health service provider, social worker or teacher or any other person approved by the court. Family Safety Act 2013 s. 5 provides that interim protection orders can be granted if there is 'sufficient evidence'. Family Safety Act 2013 s.7 provides that defended applications for protection orders will be granted if domestic violence is shown on the 'balance of probabilities'.	Yes	
Art. 2	2.20 Does the State party mandate gender-sensitive and domestic violence training of judicial and law enforcement officers and other public officials, including on CEDAW and intersectional discrimination [to ensure that officials are impartial and fair in	GR19(24)(b) Case no. 5/2005	N/a (non-legislative).	n/a	

	cases of sexual offences and violence against women, and not affected by prejudices or stereotypical gender notions]?				
Art. 2	2.21 Does the State party promote enhanced coordination among law enforcement and judicial officers, ensuring that all levels of the criminal justice system routinely cooperate with NGOs that work to protect and support women victims of gender-based violence?	Case no. 5/2005	N/A (non-legislative).	n/a	
Art. 2	2.22 Has the State party: <ul style="list-style-type: none"> a) Reviewed the definition of rape in the legislation so as to place the lack of consent at its centre? b) Removed any requirement in the legislation that sexual assault be committed by force or violence, and any requirement of proof of penetration, and/or corroboration? c) Minimized the secondary victimization of the complainant/survivor in 	Case no. 18/2008	Rape under s.49(2) of the <i>Crimes Act 2013</i> is when a male has sexual intercourse with a female without her <i>consent freely and voluntarily given</i> . The <i>Crimes Act</i> provides for a broad range of coercive circumstances that do not in themselves amount to consent. Section 51(1) excludes circumstances such as: <ul style="list-style-type: none"> i. Consent extorted by fear or bodily harm or threats, ii. Personating the victim's spouse or partner iii. False representation as to the nature and quality of the act iv. person is asleep or unconscious 		Section 51(3) provides a defence to rape if the accused honestly and reasonably believes that consent was given. Section 54 requires the accused to know that consent was induced by threat in order for the conduct to be an offence. Both of these turn on the expectation of the accused, rather than the actual consent of the victim. There is no burden on the accused to show 'unequivocal agreement', or to take steps to ascertain consent. The Evidence Act is currently under

	<p>proceedings by enacting a definition of sexual assault that either:</p> <p>i. Requires the existence of “unequivocal and voluntary agreement” and requiring proof by the accused of steps taken to ascertain whether the complainant/survivor was consenting, or</p> <p>ii. Requires that the act take place in “coercive circumstances” and includes a broad range of coercive circumstances?</p>		<p>v. person is under the influence of alcohol or drugs to the extent that he or she does not have the capacity to consent</p> <p>vi. intellectual, mental or physical condition of such a nature or degree.</p> <p>Section 54 provides a separate offence for sexual conduct with consent induced by threats. Threats that can induce consent include a threat that the person will commit an offence; a threat that the person will make a disclosure or accusation that threatens another person’s reputation; or a threat that the person will make improper use of power arising out of their occupational position or a commercial relationship, to the detriment of the other person.</p>		<p>review. Initial indications are that the Bill under development will propose to remove any requirement of corroboration.</p>
Art. 3	<p>3.1 Has the State party passed legislation that promotes the full development and advancement of women in the political, social, economic and cultural fields on an equal basis with men?</p>	Art. 3	<p>The <i>Ombudsman (Komesina o Sulufaiga) Act 2013</i> gives the Ombudsman Office particular functions regarding human rights, including promoting awareness of human rights and efforts to combat discrimination (s 33). The mandate specifically includes reference to CEDAW (Schedule 1).</p> <p><i>Ministry of Women’s Affairs Act 1990</i> establishes the Ministry of Women, Community</p>	Yes	<p>There are a wide range of organisations with responsibility to promote development and advancement of women.</p>

			and Social Development, responsible for promoting women. Section 11 – establishes the Women’s Advisory Committee (WAC) who is responsible for overseeing the full development and advancement of women in Samoa in all stipulated areas such as the political, social, economic and cultural fields. Under s. 12 the Minister of the MWCSO (who is also the Chairman of the WAC) is responsible for implementing government policy in relation to the advancement of women. Section 16A further creates a role of <i>Sui Tama’ita’i o le Nu’u</i> as a female representative of each village.		
Art. 4	4.1 Has the State party otherwise taken appropriate measures, including temporary special measures that aim to accelerate de facto equality between men and women?	4(1)	Constitutional Amendment Act 2013 establishes a quota system for representation of women in Parliament.	Partial	The CEDAW Committee recommends that more temporary special measures are taken, particularly in areas of representation and employment. However, these may not be required to be legislative measures.
Art. 4	4.2 Are special measures exempt from categorization as discrimination, including measures protecting maternity?	4(2)	Constitution art. 15(3) exempts measures that make provision for the protection or advancement of women.	Yes	
Art. 5	5.1 Is there a provision in the Constitution, or otherwise codified	5(a)	The Constitutional guarantee of equality and non-discrimination is supreme law, but allows for	Partial	The extent of the applicability of the article 15 guarantee to discriminatory

	in legislation, that gives precedence to the principle of equality if this principle conflicts with the State party's customary practices based on the idea of the inferiority or superiority of either of the sexes, or on stereotyped roles for men and women?		some existing laws (including custom and usage that has acquired the force of law) to continue. Further some Samoan custom and usage is given lawful status by the Constitution in instances such as Matai titles and customary land. (s.101-103)		customs around matai titles and administration of customary land is uncertain.
Art. 5	5.2 Has the State party taken appropriate measures to ensure that family education includes an understanding of maternity as a social function, and codified the best interest of the child standard as the primary consideration in all cases?	5(b)	N/A	Partial	<p>This primarily calls for non-legislative measures, however, there are some provisions in legislation that continue stereotyped expectations of roles of men and women, and it would be possible for these to be reviewed and amended. These include:</p> <ul style="list-style-type: none"> • The statutory functions of MWCSO under the <i>Ministry of Women's Affairs Act</i>, which focusses on the home-based roles of women; • The paternity leave provisions in the <i>Labour and Employment Relations Act 2013</i> which give men only 5 days leave, perpetuating the primary role of

					<p>women as child-carers;</p> <ul style="list-style-type: none"> • Child and spousal maintenance provisions in the <i>Divorce and Matrimonial Causes Ordinance 1961</i> and the <i>Maintenance and Affiliation Act 1967</i>, which contain different provisions for maintenance in relation to husbands and wives which continue an expectation that men are the primary income earner and women are dependent.
Art. 6	6.1 Has the State party criminalized the trafficking and the sexual exploitation of women?	GR19(14)	<p>Crimes Act 2013</p> <p>Trafficking:</p> <ul style="list-style-type: none"> - Section 154 - smuggling of migrants, - Section 155 - by means of coercion or deception, - Section 156 - aggravating factors for the purpose of sentencing, and - Section 157 - people under the age of 18. <p>Sexual Exploitation:</p> <ul style="list-style-type: none"> - Section 74 - forbids living on the earnings of the prostitution of another person. - Section 75 - prohibits the procurement of any woman or girl to have sexual intercourse with any male who is not her husband. 	Yes	<p>The CEDAW Commentary notes that the women engaged in sex work may be particularly vulnerable if their status is unlawful. Therefore prohibition alone may not be sufficient.</p>

			- Section 157 criminalises the buyer by prohibiting any dealing of any person under the age of 18 for sexual exploitation.		
Art. 6	6.2 Does the State party prevent, prosecute and punish trafficking and related human rights violations in its jurisdiction, and adopted specific protective measures for women and girls, including for those internally displaced and refugees?	GR30(41)	N/A (non-legislative)	n/a	
Art. 6	6.3 Has the State party adopted a policy of zero tolerance on abuse, trafficking and sexual exploitation based on international human rights standards, including for national troops, peacekeeping forces and humanitarian actors, providing them with gender-sensitive training on how to identify and protect vulnerable women and girls?	GR30(41)	N/A (non-legislative)	n/a	
Art. 6	6.4 Has the State party adopted a comprehensive gender-sensitive and rights-based migration policy that ensures that women and girls	GR30(41)	N/A (non-legislative)	n/a	

	coming from conflict areas are not subject to trafficking?				
Art. 6	6.5 Has the State party adopted bilateral or regional agreements to facilitate the prosecution of perpetrators trafficking in women?	GR30(41)	N/A (non-legislative)	n/a	
Art. 7	7.1 Is there an equal right between men and women to vote?	7(a) GR23	Sections 16 and 19 of the <i>Electoral Act 1963</i> governs the qualifications of persons to vote. To be eligible to vote a person must be a citizen of Samoa and be at least 21 years of age. There is no distinction as to gender.	Yes	
Art. 7	7.2 Is there equal eligibility between men and women for political representation in all publicly elected bodies, and to participate in the formulation of policy?	7(a), (b) GR23	To be eligible a candidate must: <ul style="list-style-type: none"> - be a Samoan citizen; - be a registered elector of a constituency; and - hold a <i>matai</i> title. <i>(Section 5 – Electoral Act 1963)</i>	Partial	Despite the equal eligibility to run for elections, statistics show that 11% of <i>matai</i> title holders are women. Furthermore, there are 7 villages that do not allow women to hold matai titles. In addition, many women matai do not participate fully in village governance. This provides a barrier to gaining the village support necessary to run a successful election campaign.
Art. 7	7.3 If inequity in the political field exists, has the government taken appropriate measures, including temporary special measures, to	Art. 4 GR23(15)	The <i>Constitutional Amendment Act 2013</i> established a gender quota system, which introduces reserved seats for 10 per cent of the National Assembly, for women. This will be	Yes	Falls short of the CEDAW target of 30% to ensure sufficient female representation in national decision-making.

	advance equality and women's participation in this field?		implemented for the first time in the 2016 elections.		
Art. 7	7.4 Do women have an equal right to participate in NGOs and other organizations concerned with the public and political life of the country?	7(c)	N/A. No legal barriers to participation.	Yes	There may be a need for temporary special measures in this area (legislative or non-legislative) to accelerate the achievement of actual equality in representation.
Art. 8	8.1 Do women have equal opportunities as men to represent government at international level and participate in the work of international organisations?	GR23	No legal barriers to participation. Cabinet is responsible for appointing ambassadors.	Yes	There may be a need for temporary special measures in this area (legislative or non-legislative) to accelerate the achievement of actual equality in representation.
Art. 9	9.1 Do women have an equal right as men to acquire, change or retain their nationality?	GR21(6)	The <i>Citizenship Act 2004</i> governs rights of both women and men to acquire, change or retain their nationality.	Yes	
Art. 9	9.2 Does marriage to an alien, change of husband's nationality, or dissolution of marriage affect wife's nationality? If marriage or the dissolution of marriage does not affect wife's nationality, then there is compliance with this indicator.	GR21(6)	No legal barrier present in relation to changes that would affect a wife's nationality.	Yes	
Art. 9	9.3 Do both parents have an equal right to determine the nationality of their	GR21(6)	Citizenship Act 2004 s. 6 – A person born in Samoa is a citizen by birth provided that at the	Yes	

	children?		time of his/her birth, at least one parent of the person is a Samoan citizen.		
Art. 10	10.1 Do women and girls have equal access to education, including access to the same curricula, examinations, teaching staff, vocational and career guidance, programmes of continuing education?	10(a), (b), (e)	The <i>Education Act 2009</i> applies equally to boys and girls and provides for those who require extra assistance. Section 58 stipulates that schools must uphold the standard of the curriculum set by the Minister responsible for the MESC.	Yes	While there still appear to be barriers to access in some cases and some selection bias in terms of the topics chosen, the legislative framework appears sufficient.
Art. 10	10.2 Has the State party advanced the elimination of any stereotyped concept of the roles of men and women in all forms of education, in particular, by the revision of textbooks, school programmes, and teaching methods?	10(c)	N/A (non-legislative).	n/a	
Art. 10	10.3 Does the State party provide/ensure the provision of the same opportunities to men and women to benefit from scholarships and other study grants?	10(d)	No legal barriers.	Yes	Women have received 59% of all government tertiary scholarships over the last 5 years.
Art. 10	10.4 Does the State party provide/ensure the provision of the same opportunities to men and women to participate actively in sports and	10(g)	No legal barriers to participation.	Yes	

	physical education?				
Art. 10	10.5 Does the State party provide on an equal basis access to educational information and advice on family planning?	10(h)	No legislative provisions.	Partial	Family planning education is not compulsory in schools. However, the best mechanism for achieving this within the scheme of education law is through curriculum policy developed by MESC, not legislation.
Art. 10	10.6 If inequality in the field exists, has the government taken temporary special measures for the advancement of women's integration into education?	GR5	N/A	n/a	There may be a need for some temporary special measures to encourage access by women to education, particularly in areas such as agriculture and engineering and science. However, best measures here are likely to be non-legislative
Art. 11	11.1 Does legislation of the State party guarantee on an equal basis the right to work, free choice of profession and employment, the right to promotion, job security, and all benefits and conditions of service?	11(1)(a), (b), (c)	The <i>Public Service Act 2004</i> regulates the employment process in the public sector. The <i>Public Service Act 2004</i> under section 18 sets out the principles of employment for the public service which includes but is not limited to: <ul style="list-style-type: none"> - section 18(2)(a) - appointing and promoting employees on the basis of merit, - section 18(2)(f) - a reasonable opportunity to apply for employment in the public service, - section 18(2)(g) - equal employment opportunity in the public service; 	Yes	

			<ul style="list-style-type: none"> - section 18(2)(h) - provision of a safe environment to work in, - section 18(2)(d) - access to training and development, and - section 18(2)(e) - reasonable remuneration and working conditions. <p>The <i>Labour and Employment Relations Act 2013 (LERA)</i> provides for the employment process in the private sector. It embodies the principles of non-discrimination in employment (sections 19 and 20).</p>		
Art. 11	11.2 Has the State party [considered] providing temporary special measures provisions in order to accelerate women's de facto equality in the field of employment?	See also GRs 5 and 25		No	The CEDAW Committee recommends that Samoa implement temporary special measures to ensure vertical and horizontal equality
Art. 11	11.3 Does the legislation provide sexual harassment protection from employers and co-workers, including recourse against a hostile work environment?	GRs 12 and 19	<i>Labour and Employment Relations Act (LERA)</i> provides protection against harassment where an employee can cease his or her service without notice where the employee is subject to physical, mental or verbal abuse or harassment by the employer at any time or place (s 57(2)). In the event that it should take place, the employer is legally obligated to pay any earned wages pertaining to that employee (s 57(3)).	Partial	The legislation does not specify any particular recourse or process in a case where an employee is subject to sexual harassment by a private employer short of ceasing employment.

			The <i>Public Service Act 2006</i> requires employers to provide a safe working environment (s18(2)(h)), and to provide employees with access to a simple and fair grievance system (s 18(2)(c)). The system is provided in the PSC Discipline Manual.		
Art. 11	11.4 Does legislation of the State party guarantees equal remuneration for men and women, including benefits, for work of equal value?	11(1)(d)	<i>LERA</i> requires employers to provide equal remuneration for similar work (s 19) and equal pay for work of equal value (s 20(4)).	Yes	
Art. 11	11.5 Does the legislation provide for equality in social security benefits, including paid leave, retirement, unemployment, sickness, invalidity, and any other incapacity?	11(1)(e)	The <i>Accident Compensation Act 1989 (ACA)</i> provides that workers who have suffered an injury either at work or as a result of a motor vehicle or boating accident are eligible for compensation for lost income, medical and rehabilitation expenses, and funeral expenses. Workers are defined as persons who have entered into or work under a contract with an employer (s 2). Compensation for vehicle or boating accidents may be available to non-workers if they ordinarily receive reward for services they render, but not if those services are for the benefit of their family members (s 35). There is no compensation or benefit available for injury that arises from any other cause outside of the course of employment.	Yes	There is no general social security system in Samoa, and so people that work in the informal sector are not entitled to any social security benefits. This is an issue for both men and women, but may be discriminatory if women are disproportionately in the informal sector.

Art. 11	11.6 Does legislation of the State party provide women protection of health and safe working conditions during pregnancy, including in the types of work given to women during the term of the pregnancy?	11(1)(f); 11(2)(d)	<p><i>Labour and Employment Relations Act 2013</i> – states that females returning to work after taking maternity leave are entitled to resume their position at the same rate of pay (s 45(3)), and are entitled to one break a day or a reduction in working hours to breastfeed or provide milk for their child (s 45(4)).</p> <p>The <i>Occupational Safety and Health Act 2002</i> places a duty of care on an employer to take all reasonably practicable steps to protect the safety, health and welfare of all employees at work and to provide and maintain a safe and healthy working environment</p>	Yes	The <i>Occupational Safety and Health Act</i> provides a general obligation, but not specific obligations regarding work given to women during pregnancy.
Art. 11	11.7 Does legislation of the State party provide women with paid maternity leave or with comparable social benefits?	11(2)(b)	<p><i>Labour and Employment Relations Act</i>. Section 43 states that an employee is eligible for a period of paid maternity leave. A woman may opt to choose between two periods of paid maternity leave where she can either take two weeks with full pay and two weeks without pay; or six weeks on two-thirds pay of the female employee's normal salary at the time she takes leave (s 44). However, this is only available to employees who have worked continuously for 12 months or more with the same employer (s 43(3)(b)).</p> <p>The <i>Public Service Working Conditions and</i></p>	Partial	CEDAW Committee recommends 14 weeks paid maternity leave.

			Entitlement Manual provides that permanent female employees in the public service are entitled to 8 weeks of maternity leave with pay, and up to 18 weeks without pay. Wage workers are entitled to 2 weeks maternity leave with pay.		
Art. 11	11.8 Does legislation of the State party guarantee women's protection from dismissal from employment because of pregnancy or maternity leave?	11(2)(a)	LERA , section 45 makes it unlawful for an employer to terminate the employment of an employee during or after her pregnancy, except on a ground unrelated to the pregnancy or birth of the child. In this case, the onus is on the employer to justify grounds for termination (s 5(2)).	Partial	There is no specific legislative protection in the <i>Public Service Act</i> .
Art. 11	11.9 Does the State party promote the establishment and development of childcare facilities?	11(2)(c)	In accordance with Cabinet Directive 2011 Issue No, 34 every government Ministry, public body and state owned enterprise is required to provide a day care room or space for lactating mothers to breastfeed their newborns should the need arise.	Partial	This requirement in relation to government Ministries is only in a Cabinet Directive, and is not guaranteed in legislation. There is also no equivalent obligation on private sector employers, nor is there general government support for child care facilities
Art. 11	11.10 Does the State party provide the same legal rights and protections to women migrant workers that are afforded to all workers?	GR26 (2009)	Under s 58 of LERA , a non-citizen of Samoa must first obtain an employment permit before undertaking employment in Samoa. Under the LERA , foreign employees are guaranteed equal rights and protection as national employees. (preamble(b))	Yes	

Art. 12	12.1 Do women have equal access to healthcare services, including those related to family planning?	12(1)	No legal barriers present.	Yes	Health access is an issue, particularly in rural communities. However, the legislative framework is not discriminatory, and access issues may be best addressed through non-legislative measures.
Art. 12	12.2 Does the State party provide women with appropriate services in connection with pregnancy, confinement and the post-natal period, including adequate nutrition during pregnancy and lactation, granting free services where necessary?	12(2)	N/A (non-legislative)	n/a	The status of abortion under criminal law is specifically raised in the 2007 Legislative Compliance Review and in CEDAW commentary as a legislative issue relating to women's access to health services. In Samoa, abortion is a criminal offence except in very limited circumstances. It may be appropriate to consider widening those circumstances to allow protection of women's health and autonomy.
Art. 12	12.3 Does the State party provide women with appropriate health services, including healthcare protocols and hospital procedures, and gender-sensitive training for healthcare workers, with regard to sexual abuse and violence against women?	GR24(15)	N/A (non-legislative)	n/a	

Art. 13	13.1 Do women have an equal right to family benefits, regardless of marital status?	13(a)	Constitution s 15(3) – no person shall be subject to any restriction or confer on any person any privilege on the ground of family status.	Yes	Samoa does not have a social security system.
Art. 13	13.2 Do women have an equal right to receive bank loans, mortgages and financial credit?	13(b)	No legal barrier to women’s rights to receive bank loans, mortgages and financial credit.	Yes	
Art. 13	13.3 Do women have an equal right to participate in recreational activities, sports and cultural life?	13(c)	No legal barrier to participation.	Yes	
Art. 14	14.1 Is there legislation or other measures taken by the State party that promote substantive equality for rural women, including participation in and benefit from rural development?	14(1), (2)	<i>Ministry of Women’s Affairs Act 1990</i> s. 16A - The ‘ <i>Sui Tama’ita’i o le Nu’u</i> ’ for each traditional village of Samoa established plays a particularly important role in ensuring the needs of rural women are heard and addressed by central and local Governance bodies. s. 16B - The duties of the <i>Sui Tama’ita’i o le Nu’u</i> includes: Promoting the advancement of women in her village; Ensuring the free flow of information between Village Women’s Committees and Government (including on the progress of implementation and monitoring of programs, activities and development projects); Collaborating closely with the Village Women’s Committee and Sui of le Nu’u on promoting	Yes	Further legislation may be required or appropriate to address particularly issues faced by rural women.

			<p>wellbeing and health of the village;</p> <p>Promoting good governance in women's committees and other women's groups;</p> <p>Performing duties that promote and support government policy related to the work on the advancement of women in the village.</p>		
Art. 15	15.1 Does the State party's constitution accord women equality with men before the law?	15(1)	Article 15(1) of the Constitution provides that all persons are equal before the law and entitled to equal protection under the law.	Yes	
Art. 15	15.2 Do women have equal treatment before courts and tribunals at levels, including equal legal capacity in all criminal matters, and civil matters such as the right to conclude contracts administer property and bring litigation?	15(2) GR 21(8)	No legal barrier to women's legal capacity in criminal and civil matters mentioned.	Yes	
Art. 15	15.3 Is there legislation that nullifies contracts and instruments that limit women's legal capacity?	15(3)	No legislation with effect of nullifying contracts and instruments that restricts women's legal capacity.	Yes	
Art. 15	15.4 Do women freedom of movement, including the right to obtain and hold a passport, and the right to choose their residence and domicile?	GR21(9)	Constitution of Samoa, art. 13 provides for the right of all persons to move freely throughout Samoa.	Yes	
Art. 15	15.5 Do migrant women living and	GR21(9)	No legal barrier to these rights.	Yes	

	working temporarily in the State have the same rights as men to have their spouses, partners and children join them?				
Art. 16	16.1 Does legislation of the State party guarantee women's entry into marriage on an equal basis as men, with choice of spouse and full and free consent?	Art. 16(1)(a), (b) GR21	<i>Divorce and Matrimonial Causes Ordinance 1961 s.9(2)</i> – a marriage shall be deemed void on the grounds of duress if at the time of the marriage there was an absence of consent by either party to marriage to the other party.	Yes	
Art. 16	16.2 Does legislation of the State party afford women and men the same rights and responsibilities during marriage and at its dissolution?	16(1)(c)	Generally broad and gender-neutral provisions regarding responsibilities at dissolution of marriage under <i>Divorce and Matrimonial Causes Ordinance 1961</i>	Yes	
Art. 16	16.3 Does legislation of the State party afford women an equal right as men to choose a family name?	16(1)(g)	No legal barrier to equal right to choose a family name. Section 24 and 68 of the <i>Births, Deaths and Marriages Registration Act 2002</i> allow any adult to change their name upon marriage.	Yes	
Art. 16	16.4 Does legislation of the State party afford both spouses equal treatment in the ownership, acquisition, management, administration, enjoyment and disposition of property?	16(1)(h)		No	There is no specific guarantee of equality of both spouses in the ownership, acquisition, management or administration of property. Land tenure is primarily based on custom.

Art. 16	16.5 Does the State party's legislation provides for no-fault divorce, or separated the grounds for divorce with the financial consequences of the separation?	GR29(40)	Divorce and Matrimonial Causes Ordinance 1961, s. 7 states that divorce is available if a marriage has broken down irretrievably. There are no fault-based financial consequences of separation	Yes	But note that in the <i>Accident Compensation Act 1989</i> , there is a presumption of dependency (and entitlement to compensation for her husband's death) that is rebutted if the wife has "deserted her husband without just cause". This has an element of fault-based consequences.
Art. 16	16.6 Does the legislation of the State party provide for an equal division of marital property including the equal treatment of financial and non-financial contributions during the marriage?	GR31(22)	Divorce and Matrimonial Causes Ordinance 1961, ss 22B and 22C , allow a court to make orders declaring or altering interests in property in proceedings for divorce. Section 22C lists a number of factors that must be taken into account in making orders regarding matrimonial property, that specifically include the financial or other contribution made.	Yes	
Art. 16	16.7 Is custody determinations and access to children under the State party's legislation based on best interests of child standard regardless of the relationship of the parents?	16(1)(d)	Infants Ordinance 1961 s.3 Where the issue of the custody or upbringing of a child shall be determined by the Court, the welfare of the child shall have first and paramount importance.	Yes	
Art. 16	16.8 Does the legislation afford protections and privileges for de facto relationships on the same basis as legal unions?	16(1)(c) GR21(18)	LER A s. 46 – men in de facto relationships working are granted paternity leave equally to married men.	Partial	No other protections or privileges in relation to de facto relationships.

Art. 16	16.9 Does the State party guarantee on a basis of equality of men and women, the same rights and responsibilities as parents, irrespective of their marital status, including in the care, protection, support and maintenance of their children?	16(1)(d) GR21(19)	The <i>Maintenance and Affiliation Act 1967</i> , s 12 – 14 allows orders for maintenance payments to be made against a parent of a child. Parent includes the mother, and, <i>if the child is legitimate</i> , the father of the child. An unmarried mother may also claim maintenance payments from the father of the child if she applies for an affiliation order against that father within 6 years of the birth of the child (ss 9 – 11).	No	While there is ability to ensure both parents have responsibility for a child even where the parents are unmarried, without a specific court order within 6 years of the child's birth, the obligations towards a child born out of wedlock rest with the mother and not the father.
Art. 16	16.10 Does the State party guarantee on a basis of equality of men and women, the same rights and responsibilities with regard to guardianship, wardship, trusteeship and adoption?	16(1)(f)	<i>Infants Ordinance 1961</i> allows for adoption and guardianship orders to be granted to suitable persons in appropriate circumstances: there is no gender component. (ss 7 and 8)	Partial	See above.
Art. 16	16.11 Does legislation of the State party provide equal treatment of men and women with regard to inheritance?	16(1)(h) GR21(34)	<i>Administration Act 1975</i> s.44 – if a person dies intestate - that estate is to be distributed in the manner on the trusts. Whoever survives his or her spouse, the surviving partner shall take the personal chattels absolutely and other part of the estate so mentioned.		Formal law is equal with regard to inheritance. However, inheritance is largely governed by custom.
Art. 16	16.12 Is there a legislative prohibition on child marriage?	Art. 16(2)	<i>Marriage Ordinance 1961</i> s.9 – A marriage officer is not permitted to solemnise a marriage of a person under 18 (male) or 16 (female), but no marriage is invalidated by a breach of this section. However, under s 12 a marriage without a	Yes	While marriages are not invalidated by a breach, it is an offence for a marriage officer to carry out a child marriage, and a marriage without a marriage officer is void

			marriage officer is void.		
Art. 16	16.13 Does the State party' legislation set the minimum age for marriage at 18 for both men and women?	Art. 16(2) GR21(36)	Marriage Ordinance 1961 s.9 - the minimum age for men to marry is 18 years, and for women 16 years.	No	The proposed <i>Child Care and Protection Bill</i> currently under development proposes raising this age to 18 for both males and females.
Art. 16	16.14 Is there a legislative requirement for the registration of a marriage in an official registry?	Art. 16(2)	Births, Deaths and Marriages Registration Act 2002 s.55 - states that all marriages in Samoa must be registered on the register created under section 69 of the Act.	Yes	
The following indicators are from the 2007 Compliance Indicators . In the 2013 revised set of Compliance Indicators , UN Women states that they “also [advise] compliance with the following indicators to indicate compliance with international best practices”. References are to the ‘old indicator number’ as referred to in the 2013 UN Women document					
1 and 2	1.13 Is stalking a criminal offence?		Stalking falls under the meaning of ‘domestic violence’ under section 2 of the Family Safety Act 2013 . Section 20 of the Divorce and Matrimonial Causes Ordinance 1961 also creates an offence of molestation of a divorced wife by her husband, which includes trespass, following, watching or besetting her dwellinghouse.	Yes	
1 and 2	1.16 Does the criminal law legislation contain a broad range of sexual assault offences graded on the basis of seriousness to the victim?		Crimes Act 2013 s 52 – 68 contain a broad range of sexual offences.	Yes	

1 and 2	1.18 Is there an offence of incest in the penal code		Section 55 of the <i>Crimes Act 2013</i> creates an offence of incest. Section 56 also creates an offence of sexual conduct with a dependant family member.	Yes	
1 and 2	1.20 Is consent specifically defined in the criminal law legislation outlining coercive circumstances?		<p>51. Circumstances which do not in themselves amount to consent – (1) For the purposes of this Part, it is not consent:</p> <p>(a) merely because the person does not protest or physically resist the sexual connection or other sexual activity; or</p> <p>(b) where—</p> <p>(i) consent is extorted by fear or bodily harm or by threats; or</p> <p>(ii) consent obtained by personating the person’s spouse or partner; or</p> <p>(iii) consent obtained by a false representation as to the nature and quality of the act; or</p> <p>(iv) the person is asleep or unconscious; or</p> <p>(v) the person is affected by alcohol or other drug to the extent that he or she cannot choose to consent or not to consent to the sexual connection or other sexual activity; or</p> <p>(vi) the person is affected by an intellectual, mental or physical condition or impairment, or physical condition of such a nature or</p>	Yes	

			<p>degree that he or she cannot consent to the sexual connection or other sexual activity.</p> <p>(2) The matters in subsection (1) do not limit the instances in which the circumstances of sexual connection or other activity cannot give rise to evidence of consent, or reasonable belief that there is consent.</p> <p>(3) It is a defence for the offence of rape that the accused honestly and reasonably believed that the consent was given.</p>		
1 and 2	1.21 Is there a legislative prohibition on use of prior sexual conduct to establish consent?		No legislative prohibition	No	Evidence law is currently being reviewed. This is potentially an area that will be dealt with in that review.
1 and 2	1.22 Is there a legislative prohibition on requirement for corroboration		No legislative prohibition	No	A statement by the AG on the <i>Evidence Bill</i> currently under development stated that the Bill will codify that corroboration for any offence (except treason and perjury) including sexual and gender based violence offences, is no longer required .
1 and 2	1.23 Is there a legislative prohibition on a requirement to provide proof of resistance?		<i>Crimes Act 2013 s. 51(a)</i> – states that it is not consent merely because the person does not protest or physically resist the sexual connection or other sexual activity.	Yes	
1 and 2	1.24 Is there a defence of honest and reasonable belief that the victim		<i>Crimes Act 2013 s. 58</i> states that there is no defence of reasonable belief to the offence of	Yes	The legislation provides only a very limited defence, that places the obligation

	is of legal age? If there is no defence of honest and reasonable belief then there is full compliance with this indicator		sexual conduct with a child under 12. However, in relation to the offence of sexual conduct with a young person under 16 (s 59), there is a limited defence if the person charged proves on the balance of probabilities that: (a) the person charged was under the age of 21 years at the time of the commission of the act; and (b) before the time of the act concerned, person charged had taken reasonable steps to find out whether the young person concerned was of or over the age of 16 years; and (c) at the time of the act concerned, person charged believed on reasonable grounds that the young person was of or over the age of 16 years; and (d) the young person consented. (s 61)		on the accused to have taken reasonable steps to ascertain the age of the young person.
1 and 2	1.25 Is a defence of consent unavailable in relation to a victim under 18?		The defence of consent is unavailable in relation to the offence of sexual conduct with a child under 12 (s 58), sexual conduct with a family member under 21 (s 56), and sexual conduct with a young person under 16 (s 59 and 61 – except in the limited circumstances outlined above).	Partial	The defence of consent is available in relation to young people aged 16 – 18, who are not dependent family members.

1 and 2	1.26 Is there an exemption from prosecution for marital rape? If there is no exemption in the legislation then there is full compliance with this indicator		No exemption. Section 29(4) <i>Crimes Act</i> – 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.	Yes	
1 and 2	1.30 Is there a provision in the criminal law legislation which states that customary practices of forgiveness shall not affect criminal prosecution or sentencing?		No. It is still acknowledged in Courts today as a mitigating factor. See example: <i>Police v Moatoga</i> [2012] WSSC 61 and <i>Police v Lauvao</i> [2011] WSSC 75	No	
1 and 2	1.32 Does the criminal law legislation allow for infanticide to replace a charge of murder or manslaughter?		Section 110 of the <i>Crimes Act 2013</i> requires a charge of infanticide to replace murder or manslaughter in relevant circumstances	Yes	
10	10.6 Is there a legislative prohibition on expulsion from school because of pregnancy		No.	No	However, policy is currently under development to prohibit expulsion for this reason, and to encourage education for pregnant teens and young mothers.
11	11.1 Are there anti-discrimination provisions in employment legislation on the grounds of sex, marital status, disability, pregnancy, sexual orientation and		LERA Section 19 provides for the prohibition of sex discrimination in employment. Section 20 (2) provides that a person must not discriminate, directly or indirectly against an employee or an applicant for employment in any	Yes	

	HIV status with sanctions		employment policies, procedures or practices on 1 or more arbitrary grounds including ethnicity, race, colour, sex, gender, religion, political opinion, national extraction, sexual orientation, social origin, marital status, pregnancy, family responsibilities, real or perceived HIV status and disability.		
11	11.9 Are there restrictions on women's choice of employment? If there are no restrictions on women's choice of employment, then there is full compliance with this indicator.		No. This was removed by LERA .	Yes	
16	16.6 Does the State party's legislation prohibit marital issues that may result in discrimination against women such as polygamy, bigamy, and bride price?		Crimes Act 2013, section 78 provides for the offence of bigamy and s 79 prohibits feigned marriages.	Yes	
16	16.10 Does the legislation provide for a maintenance and custody order during separation based on need?		Custody orders are provided for in the Divorce and Matrimonial Causes Ordinance 1961, s 24 (specifically including cases of judicial separation), the Infants Ordinance 1961, s 4 , and the Maintenance and Affiliation Act 1967, s 12A . Section 3 of the Infants Ordinance 1961 provides that in any proceeding involving the custody or upbringing of a child, the welfare of	Yes	

			the child will be the first and paramount importance.		
16	16.11 Is there legislation to enable women to occupy the marital home when settlement is not possible or in situations of domestic violence?		Sections 22B and 22C of the <i>Divorce and Matrimonial Causes Ordinance 1961</i> allow the court broad powers to declare interests in property and make orders altering interest in property as it sees fit. In common law, orders for occupation have been issued in favour of the wife.	Yes	
16	16.14 Is there a duty on the court to promote reconciliation? If the legislation does not contain such a duty then there is full compliance with this indicator		<i>Family Court Act 2014- s. 6</i> states that the Family Court must, so far as possible, promote conciliation. Section 7 requires parties to engage in alternative dispute resolution, unless the Court is satisfied that the circumstances are inappropriate	Partial	There is an obligation, but the Court has discretion to set the obligation aside in appropriate circumstances
16	16.16 Does the legislation provide for the payment of child support upon divorce based on need?		<i>Maintenance and Affiliation Act 1967, s 12</i> allows maintenance orders to be made in respect of children to ensure they are provided with adequate maintenance. Section 24 of the <i>Divorce and Matrimonial Causes Ordinance 1961</i> also provides a general power to make maintenance payments in proceedings for divorce or separation as appears just to the Courts. Section 3 of the <i>Infants Ordinance 1961</i> provides that in any proceeding involving the custody or upbringing of a child, the welfare of	Yes	

			the child will be the first and paramount importance.		
16	16.17 Does the legislation provide maintenance for woman based on commitments, income, earning capacity assets?		<p><i>Divorce and Matrimonial Causes Ordinance 1961</i> – s. 22 – If the Court thinks fit, it may order the husband or his personal representatives to pay to the wife for any term not exceeding her life a monthly or weekly sum for her maintenance and support as the Court may think reasonable, and every such order made against the husband shall be enforceable against his personal representatives after his death.</p> <p>22A.Orders relating to alimony and maintenance–(1) In considering under section 22 what orders may be appropriate for the provision of alimony and maintenance the Court must take into account the following matters:</p> <ul style="list-style-type: none"> (a) the age and state of health of the parties; (b) the proper needs of each party to the marriage having regard to— <ul style="list-style-type: none"> (i) the age of the person; and (ii) any special needs of the person; and (c) the income, earning capacity, property and financial resources of the person to be paid maintenance having regard to— 	Yes	

			<ul style="list-style-type: none"> (i) to the capacity of the person to earn or derive income, including any assets of, under the control of or held for the benefit of the person that do not produce, but are capable of producing, income; and (ii) disregard the income, earning capacity, property and financial resources of any other person unless, in the special circumstances of the case, the court considers it appropriate to have regard to them; and (d) the financial contribution made directly or indirectly by or on behalf of a party to the marriage or a child of the marriage; and (e) the commitments of each party to the marriage that are necessary to enable that party to support himself or herself or any other person that the party has a duty to maintain; and (f) any special circumstances which, if not taken into account in the particular case, would result in injustice or undue hardship to any person. 		
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