



GOVERNMENT OF SAMOA

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

**Samoa's Legislative Compliance  
with the Convention on the  
Elimination of all forms of  
Discrimination Against Women  
(CEDAW)**

**Final Report (17/16)**

**August 2016**



**GOVERNMENT OF SAMOA**

**OFFICE OF THE PRIME MINISTER AND MINISTER FOR THE SAMOA  
LAW REFORM COMMISSION**

The Honourable Speaker  
**THE LEGISLATIVE ASSEMBLY OF SAMOA**

In compliance with section 9 (2) of the *Law Reform Commission Act 2008*, I have the honour to submit to you copies of the Report on the CEDAW Legislative Compliance Project as referred to the Samoa Law Reform Commission for review.

This report sets out the Commission's recommendations on CEDAW Legislative Compliance Review after public consultations and research in accordance with section 4 of the *Law Reform Commission Act 2008*.

A handwritten signature in black ink, appearing to read 'Tuilaepa Malielegaoi'.

(Hounourable Tuilaepa Lupesoliai Fatialofa Dr. Sailele Malielegaoi)  
**PRIME MINISTER AND MINISTER FOR THE SAMOA LAW REFORM  
COMMISSION**



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Honourable Tuilaepa Lupesoliai Fatialofa Dr. Sailele Malielegaoi  
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(Leota Theresa Potoi)

**EXECUTIVE DIRECTOR**

**SAMOA LAW REFORM COMMISSION**

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## **TERMS OF REFERENCE**

1. The Convention on the Elimination of Discrimination Against Women (**CEDAW**) was ratified by Samoa in 1992. Upon ratification, Samoa became legally obligated under the Convention to enact necessary legislation to give domestic effect to CEDAW.
2. In 2008, the Samoa Law Reform Commission (**Commission**) received a reference from the Attorney General to review the level of compliance of Samoa's legislation with its obligations under CEDAW.
3. Whilst the focus of this review is on legislative compliance, the Commission has, due to the substantial insights gained from research, public consultations and submissions received, included some recommendations for non-legislative measures where appropriate.

## **PREFACE**

1. The aim of this Report is to assess the actual impact of legislative measures that are in place, 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 to gain deeper understanding of the issues that are significant for women in Samoa.
2. A CEDAW Discussion Paper was published by the Commission in June 2015 which included 38 questions regarding Samoa's legislative compliance in relation to the substantive articles of CEDAW.<sup>1</sup> Submissions were sought on these questions and a CEDAW working group was established to help the Commission identify both legislative and non-legislative measures carried out by Government agencies to meet Samoa's obligations under CEDAW.<sup>2</sup> The Commission also reviewed an assessment of Samoa's legislative compliance with CEDAW that was initially carried out by the United Nations Development Fund for Women (**UNIFEM**) and the United Nations Development Programme (**UNDP**) published in 2007.<sup>3</sup> Furthermore, 'General Recommendations' and 'Concluding Observations' provided to Samoa by the Committee on the Elimination of Discrimination against Women (**CEDAW Committee**<sup>4</sup>) in

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<sup>1</sup> Samoa Law Reform Commission, *Convention on the Elimination of Discrimination Against Women Discussion Paper*, Discussion Paper 03 (2015).

<sup>2</sup> The CEDAW Working Group consisted of representatives from the Office of the Attorney General (**AGO**), Office of the Ombudsman, Ministry of Women, Community and Social Development (**MWCSD**), Ministry of Police (**MoP**), Ministry of Commerce Industry and Labour (**MCIL**), Ministry of Education Sports and Culture (**MESC**), Ministry of Health (**MoH**), and National Health Services (**NHS**), including an observer from UN Women.

<sup>3</sup> Vedna Jivan and Christine Forster, 'Translating CEDAW Into Law: CEDAW Legislative Compliance In Nine Pacific Island Countries' (May 2007) UNDP Pacific Centre and UNIFEM Pacific Regional Office, Suva Fiji.

<sup>4</sup> The Committee on the Elimination of Discrimination against Women (**CEDAW Committee**) is a body of experts from 23 different countries which monitors States' implementation of CEDAW and provides guidance on compliance with CEDAW obligations.

2012, were also raised in the Discussion Paper.<sup>5</sup> These were all considered by the Commission in this Report.

3. Public consultations on key issues raised in the Discussion Paper were carried out in September and October 2015 in Apia and Saleapaga in Upolu and Sapapali and Asau in Savai'i. It was evident from these consultations, submissions received and the Commission's research, that some of the most pressing issues facing Samoan women concern violence against women and their participation in public and political life.
4. The Commission has therefore discussed the two broad issues of violence against women and their participation in public and political life in Part 2 and 3 of this Report, with the intention that these are given particular and urgent attention. Part 4 of this Report addresses other issues arising which do not fall under these two broad areas. However, so that this Report may stand alone, we have incorporated parts of our Discussion Paper where appropriate in Part 4 of the Report, in relation to CEDAW articles that Samoa appears to be in full compliance.
5. The Commission notes submissions from the Samoa Fa'afafine Association (**SFA**) and observed that many members of the public raised similar issues in respect of transgender persons, *fa'afafine* and *fa'afatane* and the discrimination they sometimes face in the community. The Commission commends SFA and members of the public for raising these significant issues and the need for the protection of members of this group against discrimination within Samoa's community. However, the Commission notes that these particular issues fall outside the scope of this Report, but strongly believes that it should be considered for a review in the near future.

## **PART 1: INTRODUCTION**

### **A. CEDAW Background**

- 1.1 CEDAW is an 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. The obligations under CEDAW embody

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<sup>5</sup> CEDAW Committee, *Concluding Observations of the Committee on the Elimination of Discrimination against Women: Samoa*, 52<sup>nd</sup> sess, UN Doc CEDAW/C/WSM/CO/4-5 (9-27 July 2012) <<http://www2.ohchr.org/english/bodies/cedaw/docs/co/CEDAW-C-WSM-CO-4-5.pdf>> (Accessed 7/12/2015). Concluding Observations highlight areas in Samoa that were assessed as most in need of reform, and which Samoa must report to the CEDAW Committee on its progress.

key principles of substantive equality, non-discrimination, and a States obligation to ensure equality and eliminate discrimination against women.<sup>6</sup>

- *Substantive equality* requires the realisation of equal rights, responsibilities and opportunities of women and men, including girls and boys<sup>7</sup> taking into account the differences in the needs of women and men.<sup>8</sup> It also means equality in the experiences and lives of women and not just ‘on paper’.
- *Non-discrimination* prohibits actions and omissions that treat people differently on the basis of their sex. Both direct discrimination and indirect discrimination must be addressed. Direct discrimination includes actions and laws intended to treat men and women differently, whilst indirect discrimination includes actions and laws that have the effect of discriminating against women, even if they are not intended to have that effect.

1.2 The obligation under most of the substantive articles of CEDAW is that States should take ‘all appropriate measures’ to eliminate discrimination in the relevant area or to achieve the particular objective. The ‘appropriate measures’ standard entails the cultural and social framework to be taken into account, recognising that appropriate measures may be different for different States. Taking ‘all appropriate measures’ also appears to recognise resource and financial limitations of States in the implementation of certain measures.

1.3 The requirement that Samoa takes ‘all appropriate measures’ therefore contains a degree of flexibility. 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. It follows that equality of women in Samoa must be implemented in a way that is appropriate in the context of Samoa.

## **B. Overview of CEDAW in Samoa**

1.4 CEDAW was perceived by members of the public during consultations as inconsistent in many respects with Samoan culture. On the other hand, many stakeholders and members of the public also recognised that key principles enshrined in CEDAW reflect values relevant to Samoan society and the *fa’asamoa*, and may not necessarily need to be codified in

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<sup>6</sup> UN Women, ‘Do our laws promote gender equality?’ (2010) <<http://asiapacific.unwomen.org/en/digital-library/publications/2012/8/do-our-law-promote-gender-equality-cedaw-bahasa>> at 7.

<sup>7</sup> United Nations, Division for the Advancement of Women, *The Role of Men and Boys in Achieving Gender Equality* (2008) <<http://www.un.org/womenwatch/daw/public/w2000/W2000%20Men%20and%20Boys%20E%20web.pdf>>

<sup>8</sup> CEDAW Committee, General Recommendation (CEDAW) GR No. 25: *Article 4 Paragraph 1 – Temporary Special Measures* (2004).

legislation. For example, the integral respect for the value and dignity of women within Samoan culture is deeply embedded in traditional *fa'asamoa* values and practices.

1.5 The traditional *fa'amatai* social structure contains distinct roles for men and women, as well as for women belonging to a village by birth right (*aualuma*) and women who have married into a village (*faletua ma tausí*).<sup>9</sup> The traditional social structure may influence public expectations of what an appropriate role for a woman is and subsequently impact on particular public roles being taken up by women. In such instances, the government may have an obligation under CEDAW to counter traditional expectations by implementing measures to ensure *de facto* equality.<sup>10</sup>

1.6 Since ratification in 1992, Samoa has made significant progress towards equality of women in Samoa and has implemented a number of crucial legislative reforms. Some of these reforms are listed briefly as follows, but covered in more detail in the Report:

- Amendments to the Constitution in 2013, providing for a minimum number of women members of the Legislative Assembly so that women comprise at least 10% of Parliament;<sup>11</sup>
- The *Crimes Act 2013*, which, among other things specifically recognised marital rape as an offence, and introduced trafficking offences;
- The *Family Court Act 2014*, which established the Family Court;
- The *Family Safety Act 2013*, which provides greater protections in cases of domestic violence, including Protection Orders;
- The *Labour and Employment Relations Act 2013*, which specifically incorporates principles of equality and non-discrimination in employment legislation;
- Amendments to the *Divorce and Matrimonial Causes Ordinance 1961* in 2010, which provides for non-fault-based divorce and ensures that non-financial contributions are also taken into account in marital property disputes;<sup>12</sup> and
- Legislative amendments ensuring gender neutral language in all legislation.<sup>13</sup>

### **C. Methodology Used to Assess Legislative Compliance**

1.7 In 2013, UN Women (Fiji) developed a set of Compliance Indicators for Pacific States to use to measure their compliance with the CEDAW.<sup>14</sup> Compliance Indicators comprise a set of questions that States can use to assess whether they are complying with each of the Articles in the CEDAW. Compliance Indicators consider both legislative and non-legislative

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<sup>9</sup> Dunlop F. P, *Tama'ita'i, Samoa: Their Stories* (1996) Institute of Pacific Studies, Suva, Fiji.

<sup>10</sup> See for example, Leasiolagi Malama Meleisea et al, 'Political Representation and Women's Empowerment in Samoa' (2015) vol 1 *Centre for Samoan Studies*, National University of Samoa.

<sup>11</sup> *Constitution Amendment Act 2013* (Samoa).

<sup>12</sup> *Divorce and Matrimonial Amendment Act 2010* (Samoa).

<sup>13</sup> *Revision and Publication of Laws Act 2008* (Samoa) s 5(o).

<sup>14</sup> Vedna Jivan and Christine Forster, 'Translating CEDAW Into Law: CEDAW Legislative Compliance In Nine Pacific Island Countries' (May 2007) UNDP Pacific Centre and UNIFEM Pacific Regional Office, Suva Fiji.



measures that a State has in place to meet its CEDAW obligations.<sup>15</sup> For example, Compliance Indicators can be used to check what legislative changes a State has made to remove discrimination against women or what policies they have to implement those laws, as well as awareness-raising or public education programs.

- 1.8 This review primarily focuses on Samoa's legislative compliance with CEDAW, and in doing so uses the Compliance Indicators as a guide to check firstly if a required law is in place (**Legislative Compliance Indicator**). If legislation is in place, the Commission may provide further assessment and has considered whether it is effectively enforced. If no legislation is in place, the Commission has explored whether there are non-legislative measures in place that achieve the same or similar result, such as policies, institutional arrangements, education and awareness raising programs about discrimination and issues facing women, as these can achieve the CEDAW objectives in their own right in certain instances.
- 1.9 A table setting out the Legislative Compliance Indicators, together with the Commission's assessment as to the level of compliance achieved by Samoa is annexed to this Report (**Appendix 2**).

## **PART 2: VIOLENCE AGAINST WOMEN**

### **A. Family Violence**

*CEDAW Articles relevant to this Part include Articles 1, 2, 16.*

- *Article 1: definition of 'discrimination against women'*
- *Article 2: to uphold principles of CEDAW and a legal framework to protect against discrimination*
- *Article 3: promote advancement of women in all fields and guarantee their human rights*

*See Appendix 1 for full text*

- 2.1 Family violence is a significant issue in Samoa. This is apparent in the data and submissions received by the Commission and from public consultations. Recent legislative changes make some advances to address family violence, and thereby advance Samoa's obligations under CEDAW. Notwithstanding these developments, acceptance of family violence still exists and presents a challenge in reducing this issue. This section expands on these legislative

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

developments and challenges, before addressing key submissions and offering recommendations for reform.

2.2 Cases coming through the new Family Court show that the majority of its victims are women.<sup>16</sup> According to research carried out by the National University of Samoa (**NUS**) there is a rising incidence of such violence, and few deterrents or social mechanisms to reduce the problem.<sup>17</sup> The National Human Right Institute’s (**NHRI**) State of Human Rights Report (**SHRR**) Survey showed that 39% of participants saw abuse against women and girls in their village in the past year.<sup>18</sup>

2.3 Statistics from the Domestic Violence Unit (**DVU**) illustrate the exponential growth of domestic violence cases in Samoa. From 2012 – 2015, the number of reported domestic violence cases more than tripled, as shown below:

Number of matters received by the Police, Domestic Violence Unit					
2010	2011	2012	2013	2014	2015
472	427	200	433	522	723

*Source: Domestic Violence Unit, Ministry of Police, 2016.*

2.4 Samoa’s legislation is mostly compliant with the Legislative Compliance Indicators concerning family violence.<sup>19</sup> There has been a significant amount of legislative reform in recent years to strengthen sanctions, processes and remedies around family violence. Of particular importance are the *Family Safety Act 2013* and a specialised Family Court established under the *Family Court Act 2014*, which provide protection and recourse for victims of family violence.<sup>20</sup>

2.5 Most notably, the passage of the *Family Safety Act 2013* introduced protection orders which victims can apply for against perpetrators of violence (only five other countries in the region

<sup>16</sup> Judge Leilani Tuala-Warren, ‘Ending Violence in Samoa Roundtable’ (UN Women Pacific, Apia, 25 June 2015).

<sup>17</sup> Leasiolagi Malama Meleisea et al, ‘Political Representation and Women’s Empowerment in Samoa’ (2015) vol 1 *Centre for Samoan Studies*, National University of Samoa at 46.

<sup>18</sup> National Human Rights Institute (**NHRI**)(Written submission 2015). To inform its first State of Human Rights Report (2014-15) the NHRI collected data via the NHRI’s Human Rights Survey 2014-15, which collected a total of 2515 surveys that sampled an age range between 10 and 88.

<sup>19</sup> See CEDAW Legislative Compliance Indicators 2.10 – 2.21, and ‘Old Indicator numbers’ 1.13 and 16.11, Appendix 2.

<sup>20</sup> *Family Court Act 2014* (Samoa) s 4(2)(a).

have similar legislation in place)<sup>21</sup>. A protection order is a court order that can prohibit a respondent from committing domestic violence, entering the complainant's residence or place of employment, under such conditions that the Court considers appropriate to protect a complainant.

2.6 Since 2013, 379 interim protection orders have been lodged with approximately 82% of these protection orders made permanent.<sup>22</sup> Furthermore, the *Family Court Act 2014* empowers the court to utilise alternative dispute resolution such as conciliation as a mechanism in responding to family violence cases. The court can order a Family Group Conference (**FGC**) for defendants who plead guilty to domestic violence charges. The FGC may involve the offender's family, village *matai* and church leaders and focuses on the offender acknowledging the offending, the causes of the offending and finding ways for the offender to make amends with the assistance of his family unit. Upon completion of the FGC, recommendations are made to the court on the way forward for the offenders, which is usually a referral to SVSG's perpetrator rehabilitation programs.<sup>23</sup> Notably, the *Family Safety Act 2013* also widened the definition of family violence to capture perpetrators of violence within the family unit rather than solely intimate partner relationships.<sup>24</sup>

2.7 The *Crimes Act 2013* also provides a range of offences covering family violence, which demonstrates broad compliance with Article 2, to take appropriate measures to condemn and sanction discrimination against women.

2.8 Other recent legislative developments include the new *Criminal Procedure Act 2016* and *Evidence Act 2015*. Under the *Criminal Procedure Act 2016*, police have the power to enter premises without a warrant to arrest an offender or prevent an offence likely to cause immediate and serious injury to another person such as domestic violence.<sup>25</sup>

2.9 The *Evidence Act 2015* introduces a provision which now permits hearsay evidence<sup>26</sup> to be admissible in court where the circumstances relating to the statement assure its reliability, and the maker of the statement is unavailable.<sup>27</sup> This change may assist in cases of domestic violence where the victim is fearful to testify, or where the victim has died. If the victim is unavailable, a prosecution could still proceed based on other evidence like police

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<sup>21</sup> Loretta Teueli, 'Weaknesses and strengths of SGBV legislation and Comparative Analysis of Legislation from Working Group members' jurisdictions' (Presentation delivered at the PILON SGBV Working Group Meeting, Apia, 3 May 2016).

<sup>22</sup> Justice Leilani Tuala-Warren, 'The Family Court' (Presentation delivered at the APF Training on Conducting a National Inquiry, Apia, 25 July 2016).

<sup>23</sup> Ibid.

<sup>24</sup> *Family Safety Act 2013* (Samoa) s 2.

<sup>25</sup> *Criminal Procedure Act 2016* (Samoa) s 30 (1)(b).

<sup>26</sup> *Evidence Act 2015* (Samoa) s 2 ('hearsay statement' means a statement that was made by a person other than a witness; and is offered in evidence at the proceeding to prove the truth of its contents).

<sup>27</sup> Ibid s 10 (1).

statements, photographs of injuries or the crime scene, subpoenaed medical records and expert testimony of victim behaviour in domestic violence cases.

2.10 Previously, the husband or wife of a defendant charged with an offence was not a compellable witness upon his or her trial for that offence. However the *Evidence Act 2015* now stipulates situations where the defendant would be compelled to offer evidence.<sup>28</sup>

These include circumstances when:

- the offence is against the wife or husband of the defendant or against a child of either the wife or the husband;
- the offence is reported to the Police by the wife or the husband of the defendant; or
- the offence is murder or manslaughter, and the wife or husband witnessed the killing of the person.<sup>29</sup>

2.11 Some of the situations in which a defendant is compelled to offer evidence are where he is being charged with an offence against his wife including abuse<sup>30</sup> or when an offence of which the defendant is charged was reported to police by the wife<sup>31</sup>. These provisions will greatly assist women affected by abuse by strengthening the evidence available to prosecutors in domestic violence cases.

2.12 Legislative Compliance Indicators concerning family violence that are not met however, include a lack of specific legislation mandating vigilant and speedy prosecution of perpetrators of family violence.<sup>32</sup>

2.13 Factors like the widespread acceptance of family violence influences the effectiveness of family violence related laws.<sup>33</sup> For example, NHRI found that many Samoans believe *fa'a Samoa* and human rights conflict here, with *fa'a Samoa* permitting husbands to beat their wives in certain circumstances.<sup>34</sup> Village *Fono* often requires that matters be raised with the *Fono* before being raised with police. This may actually deter the laying of complaints, especially if the alleged perpetrator is a member of that *Fono*, and may also result in a matter not being reported to police.<sup>35</sup> Therefore, notwithstanding recent legislative reforms, the effectiveness of such legislative developments can only be tested with the fullness of time.

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<sup>28</sup> Ibid s 61 (1).

<sup>29</sup> Ibid s 61 (2).

<sup>30</sup> Ibid s 61 (2)(b).

<sup>31</sup> Ibid s 61 (2)(c).

<sup>32</sup> See CEDAW Legislative Compliance Indicator 2.16, Appendix 2.

<sup>33</sup> Leasiolagi Malama Meleisea et al, 'Political Representation and Women's Empowerment in Samoa' (2015) vol 1 *Centre for Samoan Studies*, National University of Samoa at 46-47.

<sup>34</sup> NHRI (Written submission 2015).

<sup>35</sup> Leasiolagi Malama Meleisea et al, 'Political Representation and Women's Empowerment in Samoa' (2015) vol 1 *Centre for Samoan Studies*, National University of Samoa at 46.

2.14 Customary governance may also influence the effectiveness of family violence related laws.<sup>36</sup> For example, exclusion of women’s voices in local and national governance may be counter-productive to the issue of family violence.<sup>37</sup> The CEDAW Committee has highlighted how traditional attitudes toward the role of women can perpetuate discrimination, and violence, against women.<sup>38</sup> Factors in relation to local and national governance will be discussed further in ‘Part 3 Political and Public Life’.

2.15 In the villages there is the authority of the Village *Fono* to enforce village rules and protocols as well as impose sanctions where these rules are breached. Village settlements without a *matai* system in place (for example the Vaitele area) were considered by some to have the most incidents of family violence. This may be attributed to the absence of the traditional form of governance in these areas of freehold land to maintain peace and harmony.

2.16 A poignant example showing that Samoa still has much to achieve in implementing family violence protections, is the recent case of Fatima Tupa’i, a 25-year-old mother of two who is alleged to have been beaten to death with a crowbar by her estranged husband while she slept with her child and family members in September 2015. It is alleged that Ms Tupa’i, had gone to police earlier in the month to report her husband’s abuse and the kidnapping of her younger daughter but did not wish to lodge a formal complaint. As a result, the husband who was banned from the victim’s village due to drunken behaviour was only given a warning by police. After a second incident by the husband, the police were again notified. The victim maintained that she did not want to file a complaint but wanted her husband removed from the village. The husband was kept in police custody overnight as a result of being intoxicated but left the station early the next morning without the police’s knowledge where he purportedly assaulted and killed Ms Fatima at her house.<sup>39</sup>

2.17 Unfortunately, the responses of the village (banning the husband) and police (warning) were insufficient. This raises serious questions as to what more can be done to protect victims of family violence.

## Submissions

2.18 Keeping in mind the recent legislative developments to target family violence, the Commission in its Discussion Paper sought submissions on whether there are further legislative measures that could be taken to strengthen and improve access to family

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<sup>36</sup> Ibid.

<sup>37</sup> Ibid at 9.

<sup>38</sup> See CEDAW Committee, General Recommendations (CEDAW) *GR No. 19: Violence Against Women* (1992) <<http://www.un.org/womenwatch/daw/cedaw/recommendations/recomm.htm>>.

<sup>39</sup> This matter is currently before the Court.

violence procedures. Public consultations held in Upolu and Savai'i and submissions received also shed light on some of the reasons women are affected by family violence.

- 2.19 During public consultation feedback was sought on the following:
- *What are some barriers to women accessing protection?*
  - *What legislative measures could be taken to strengthen and improve access to family violence protection?*
  - *What non-legislative measures could be taken to strengthen and improve access to family violence protection?*

Unless otherwise stated the following points noted are from public consultations.

***Consultations: What are some barriers to women accessing protection?***

*Perception and Attitudes*

2.20 Consultations revealed that women's own perceptions and mind-sets often prevent them from seeking access to protection. These include:

- Fear of the husband or partner and what he might do if they report him (including fear for their lives);
- Feeling physically and mentally weak;
- Love for their husband and the willingness to forgive and remain faithful to him;
- Love for their children and the desire to put the children's interests first (if something happens to their children they are more likely to seek help and protection);
- Concern that the husband will leave them and that this would result in breaking up the family;
- Fear as to who would support the family if the husband went to jail or was required to leave;
- Belief that they have a role in solving any problems within their own family;
- Belief that there is a chance of reconciliation with the husband;
- Respect for the husband and his role as head of the family;
- Fear that talking about their problems or seeking help would ruin the family's reputation;
- Shame and embarrassment;
- Feeling that they cannot turn to their extended family for help as they are married into their husband's family and may not have a close relationship with them;
- Fear that they will also be accused of breaking the law;
- Belief that they were at fault.

2.21 There are various attitudes and responses on village governance, presenting barriers to women accessing protection. For example, it was reported that in some cases women may seek help from *matai* in the first instance, but the abuse is not presented to the Village

*Fono*. It was also reported that family members or *matai* are sometimes pressured or paid not to report offenders to the Village *Fono*. Furthermore, women are often not taken seriously when they seek protection or are viewed as being at fault in the first place.

2.22 Such attitudes by those involved in village governance are not helped by women's lack of participation in the Village *Fono*. It was expressed that in some villages women cannot be *matai* and therefore do not have the opportunity to sit in the Village *Fono* to voice their opinions or assist in decision-making – including in relation to issues of family violence. In other villages, even women who are *matai* are sometimes not allowed to sit in the Village *Fono* or do not have a say in Village *Fono* meetings.

2.23 One submitter gave several examples where attitudes of persons in positions expected to assist victims of family violence (including some police officers and medical staff) posed barriers to the victims, through discouraging reporting or trivialising the violence. A renowned advocate and survivor of domestic violence expressed that as a victim one of the greatest disappointments when seeking assistance from agencies, namely police and health professionals, was the indifferent and ignorant attitudes and behaviours towards victims. She raised that it is extremely difficult for victims to gather the courage to step out and report perpetrators in the first place. However, many victims feel reluctant to take their case any further when met with these negative attitudes and would rather tolerate the violence than the indifference from the response agencies.<sup>40</sup>

2.24 During consultations it was clear that particular interpretations of Samoan culture and Christianity are in part responsible for the barriers some women face when seeking protection from family violence, and for condoning family violence. For example, the view that the husband or father is the head of the family who must be obeyed and has control over the wife was often considered a 'good enough' reason to condone violence by the husband.

#### *Lack of Awareness and Practical Support*

2.25 Concern was expressed by many women in the villages that women are not aware of or do not understand the protection available to them under the law. Some considered that this was due to a failure by the Government to educate and raise public awareness about legal protection available.

2.26 A lack of practical support available for victims of family violence was also raised as a common issue. For example, due to financial constraints women are often unable to access a phone or transport to seek help from police.

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<sup>40</sup> Lemalu Sina Retzlaff, 'Experience of a Survivor' (Presentation delivered at the APF Training on Conducting a National Inquiry, Apia, 28 July 2016).

2.27 It was also raised that when women did seek help from the Police there were instances where victim's statements had to be made in the reception area due to a lack of the proper infrastructure for the DVU. Some victims would feel reluctant to speak of their personal and intimate details of abuse where people are within earshot.

2.28 It was also raised that penalties imposed by Village *Fono* provide further substance to women's fears of financial hardship. For example, a fine imposed on the husband would in most cases fall on the extended family whose resources are ultimately shared anyway. Banishment is also possible which would similarly entail loss of financial support for the family.

### *Consultations: What legislative measures could be taken to strengthen and improve access to family violence protection?*

#### *Village Governance*

2.29 More inclusive village governance by giving women a stronger voice was seen by many consulted as a means of improving access to family violence protection. For this to occur it was maintained that women should be permitted to hold *matai* titles and allowed to participate in the Village *Fono* and that this should be clearly set out in the law.

2.30 It was also suggested that including offences and recourse for family violence in village bylaws would strengthen family violence protection. Furthermore, Village *Fono* should be required by law to help enforce protection orders.

#### *Protections for non-victim reporters*

2.31 It was noted that the *Family Safety Act 2013* provides no protections for non-victims who report family violence, which may contribute to the low reporting rates.<sup>41</sup> It was submitted that including protections in the legislation for persons who report family violence could go some way to remedying this.<sup>42</sup>

#### *Protection Orders*

2.32 Issues were raised in relation to the practicability and workability of protection orders. The Sexual Gender Based Violence (SGBV) Working Group recommended that improvements could include looking at situations in which an application for a protection order is made and both the complainant and respondent do not appear on the return date.<sup>43</sup> Furthermore, the *Family Safety Act 2013* should provide for police officers to serve

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<sup>41</sup> NHRI (Written submission 2015).

<sup>42</sup> Ibid.

<sup>43</sup> Loretta Teueli, 'Weaknesses and strengths of SGBV legislation and Comparative Analysis of Legislation from Working Group members' jurisdictions' (Presentation delivered at the PILON SGBV Working Group Meeting, Apia, 3 May 2016). Note the SGBV working group is comprised of 10 members mainly prosecutors, legal officers and police from PILON Pacific Island States.



application for a protection order on the respondent (which is the current practice), as the law requires the complainant's counsel or Registrar to do so, raising safety concerns for the Registrar.<sup>44</sup>

2.33 A suggestion was made for conditions of a protection order to be more flexible to accommodate for situations where communication between the victim and perpetrator would be required for co-parenting for young children. It was raised that some women might become unwilling to apply for a protection order, if conditions imposed were not flexible enough to take into account the practicalities of raising young children with the perpetrator, particularly where the victim relied on the perpetrator financially for the care of the children. The submitter noted that the risk of the perpetrator breaching such conditions may be mitigated where care is taken to ensure the perpetrator is fully aware of the implications of breach, and that if the perpetrator used such condition intended for ease of co-parenting for any improper purpose, it would be treated as a breach of the protection order.

2.34 Samoa Victim Support Group (SVSG) also submitted that the protection order process should be streamlined to make it easier for victims of family violence, so that the process is efficient and the protection order is in effect as soon as reasonably practicable.

#### *Legal action against Police*

2.35 A submitter suggested that legal action be taken against police who disregard a woman's complaint where that woman is later assaulted and/or murdered.<sup>45</sup>

#### ***Consultations: What non-legislative measures could be taken to strengthen and improve access to family violence protection?***

#### *Improved collaboration*

2.36 Suggestions raised in public consultations for strengthening and improving access to family violence protection included the need for police and Village *Fono* to work more collaboratively. One example is to include the Village *Fono* in the enforcement of protection orders by ensuring that abusive partners adhered to protection orders (by removing the offender from the family home or village and monitoring to ensure the offender stayed away).<sup>46</sup> This was viewed as extremely important as a protection order on its own would not necessarily guarantee the safety of the applicant. Furthermore, it was submitted that where a protection order is breached, response by police must be immediate and decisive.<sup>47</sup>

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<sup>44</sup> Ibid.

<sup>45</sup> Submission from public consultations.

<sup>46</sup> Ibid.

<sup>47</sup> Ibid.

2.37 Furthermore, the Law and Justice Sector should improve collaboration and sharing of resources and take a holistic approach on community awareness so that everyone (especially victims of abuse) are fully informed of the assistance available.<sup>48</sup>

*Increased awareness about legal protection and changing attitudes*

2.38 Increasing awareness about legal protections against abusive partners using various forms of media and also in schools was seen as critical in improving access to family violence procedures, particularly to those in rural areas. This includes the need for government to inform village representatives about any new laws and ensure effective representation in consultations, so that it also includes women who are not village representatives and young people.<sup>49</sup>

2.39 The need to raise awareness of the Village *Fono* and families in the village on how to recognise family violence, where to go to for help, and what victims can expect from the police and health professionals was also raised.<sup>50</sup> It was suggested that relevant Government agencies such as Ministry of Women Community and Social Development (**MWCSD**), Ministry of Justice and Courts Administration (**MJCA**) and NHRI should work with village councils, relevant authorities and engage non-governmental organisations (**NGOs**) to increase public awareness of the *Family Safety Act 2013* and how to engage in its legal proceedings.<sup>51</sup>

2.40 It was considered that if changing attitudes resulted in an increase in customary penalties in matters of family violence and this was applied consistently, the increased penalties would act as a deterrent.

2.41 Some *Alii* and *Faipule* expressed that women have the right to seek protection of the law when they are assaulted *more than once* by their partner. Some *Tina* and *Tamaitai* considered that women should solve these problems themselves when they arise. It was also noted that if a problem arises between a couple they should solve it together, that women should not have short tempers, and that it is when a problem affects a child that it should immediately be taken to the police. These comments from the public consultations in Sapapali'i are worth noting due to the light they may shed on underlying attitudes towards family violence, and the need to change imbedded attitudes.

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<sup>48</sup> Papalii John Taimalelagi, 'The importance of the Registrar's Role in expediting the process for applications for Protection Orders; the benefits in a partnership with an Non-Governmental Organisation such as Samoa Victim Support Group (**SVSG**); and the role of the Law & Justice Sector as a whole approach in combating SGBV' (Presentation delivered at the PILON SGBV Working Group Meeting, Apia, 3 May 2016).

<sup>49</sup> MWCSD (Written submission 2015).

<sup>50</sup> Lani Wendt Young (Written submission 2015).

<sup>51</sup> NHRI (Written submission 2015); MWCSD has been carrying out capacity building and awareness with village representatives on the *Family Safety Act 2013* (Email from Alanna Seugamatupu, Principal Programs and Training Officer, MWCSD (Apia, 21 March 2016)).

2.42 It was considered that programs such as anger management programs particularly for men could contribute to changing attitudes and acceptance of family violence 'being normal'. Furthermore, churches being very influential in Samoa, have an extremely important role through teachings that build strong families, and by preaching on this issue.

2.43 It was suggested counselling groups could also help encourage women to be more open rather than hiding family violence. Currently counselling services are offered for both victims and abusers by some organisations,<sup>52</sup> however it was considered that women needed to be willing to seek help (particularly from *Alii* and *Faipule* and church ministers), and to report their partners to police.

2.44 According to NHRI's survey, only 25% of participants who witnessed abuse against women and girls and their village in the past year reported it.<sup>53</sup> The attitudes, particularly the belief that issues such as family violence should be settled within the family, help foster a 'culture of silence' on the issue within villages.<sup>54</sup> Referring to the death of Fatima Tupa'i, one submitter put this 'culture of silence' into stark contrast with the otherwise community-oriented Samoan culture, stating:<sup>55</sup>

*When I read about Fatima's death, I asked myself, 'where was her village? Where were her neighbours?'*

2.45 During consultations, some *Tina* and *Tamaitai* maintained that the kind of language used regarding women and their position in families fuels harmful attitudes against women. For example, using the word '*itupa vaivai*' or 'weak gender' to refer to women and '*itupa malosi*' or 'strong gender' to refer to men.

#### *Training for Police and Health officials*

2.46 The need for police to undergo training on how to respond appropriately so that women can have confidence in seeking assistance from the police when seeking protection was emphasised.<sup>56</sup> SVSG submitted that in their experience, complaints of family violence by a woman about her husband were sometimes not acted on promptly by the Police, for example to ensure that protection orders are served on time.<sup>57</sup> However the Commission

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<sup>52</sup> For example SVSG, Faataua Le Ola, Gualofa Society, Samoa Returnees Charitable Trust, UN Women (Hotline), MJCA (Toetomanatu Program).

<sup>53</sup> NHRI (Written submission 2015).

<sup>54</sup> CEDAW Committee, '*Concluding Observations of the Committee on the Elimination of Discrimination against Women: Samoa*', 52<sup>nd</sup> sess, UN Doc CEDAW/C/WSM/CO/4-5 (9-27 July 2012)

<sup>55</sup> Submission from public consultations.

<sup>56</sup> SVSG (Written submission 2015).

<sup>57</sup> The Commission was advised that the Domestic Violence Unit (DVU) provides domestic violence training to general policing colleagues to help victims of abuse (Email from Sina Enoka Tafua, Officer in Charge of the DVU and Police Superintendent, MoP (Apia 31 March 2016)).

notes that the *Family Safety Act 2013* requires the service of protection orders to be carried out by the complainant's legal counsel or the Registrar.

2.47 A concern that was repeatedly raised by the public was the need for training to be provided for police officers, including officers who appeared in court for protection order hearings. It was raised by a submitter that the hearing of a permanent protection order she was seeking had been adjourned due to the ill preparedness of the police officer who appeared in Court. This was raised to be particularly concerning as such occurrences could discourage some women to return to the adjourned hearing, which would result in protection orders being set aside and women not having access to this important form of protection the law provides.

2.48 It was also suggested that training of health professionals who deal with victims of family violence is also very important. Furthermore, the Ministry of Health (**MOH**) should have in place policies on family violence addressing how best to treat women who are victims of family violence.<sup>58</sup>

#### *Improved Practical Support for Victims*

2.49 It was submitted that raising awareness about legal protections is only useful insofar as there is practical support available for victims of family violence. Various forms of support could include welfare officers to help victims of family violence, accessible shelters where victims can contact police, special committees in the villages for women to seek refuge and guidance, and access to financial means for women to seek protections (for example, for calling or getting to police). In practice, many women have resorted to SVSG, which was revealed in consultations with the public.

2.50 SVSG emphasised the need for government-funded shelters noting they were the only organisation to run shelters for victims of family violence through donations and the generosity of volunteers, and that the demand for shelters exceeded capacity. SVSG noted that their shelters provided safety, access to counselling, and support and assistance with mediation or legal processes.<sup>59</sup> One submitter proposed that the MOH, in cooperation with the MWCSO, seek a partnership with SVSG as a provider of support and refuge for victims of family violence.<sup>60</sup> Others considered that extended families should also be encouraged to take responsibility for helping to protect victims of family violence.

2.51 A submission received emphasised that the focus should not only be on preventative measures but also on rehabilitation programs for domestic violence offenders. It was submitted that there should be programs targeted at delivering rehabilitation for domestic

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<sup>58</sup> MWCSO (Written submission 2015).

<sup>59</sup> SVSG (Written submission 2015).

<sup>60</sup> MWCSO (Written submission 2015).

violence offenders that teaches the offender to control violent impulses and resolve conflicts without violence. It was also raised that in many incidents of domestic violence offenders are intoxicated, as such alcohol rehabilitation needs to form part of the domestic violence rehabilitation.<sup>61</sup>

#### *Improved data collection*

2.52 The lack of information and disaggregated statistical data regarding the prevalence of violence against women and its nature, extent and causes is a major concern and contributes to lack of enforcement activities. NHRI proposed that the DVU will regularly collect statistical data on domestic and sexual violence disaggregated by sex, age, region (urban/rural), and relationship between victim and perpetrator, to be reported on a quarterly basis directly to NHRI.<sup>62</sup>

### **Commission's views – Legislative Measures**

#### *Family Safety Act 2013*

2.53 Under the *Family Safety Act 2013* a person may act on behalf of a complainant in applying for a protection order.<sup>63</sup> Such persons include legal counsel, village representative, child welfare officer, counsellor, health service provider or teacher or any other person approved by Court.<sup>64</sup> A police officer is not expressly provided (although a police officer may be approved by the Court) despite that often a police officer may be the first person a complainant may come across. It would be practical to expressly include a police officer as a person that may act on behalf of a complainant.

2.54 Under the Act, an application for a protection order can only be brought if the victim or complainant consents.<sup>65</sup> Therefore where victims do not wish to apply for a protection order due to undue influence, family pressure, or respect or fear of the husband or partner, a complaint cannot be made. This is not unusual and may result in situations where a protection order is not sought despite a high risk of harm to the individual. The legislation should cater for such situations, so that a complaint may still be made in extreme cases whether or not consent is given by the individual affected. For example, a person permitted to make an application on behalf of a complainant such as a police officer, child welfare officer, health service provider, or social worker should be able to apply on behalf of an

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<sup>61</sup> Justice Mata Tuatagaloa, Supreme Court Judge, Samoa, 'Alcohol and Drugs Court - a new initiative of the Judiciary of Samoa, (a therapeutic court to deal with alternative methods of sentencing other than imprisonment)' (Presentation delivered at PILON SGBV Working Group Meeting, Apia, 4 May 2016). One participant declined, and the other two were issued a warrant of arrest.

<sup>62</sup> NHRI (Written submission 2015).

<sup>63</sup> *Family Safety Act 2013* (Samoa) s 4(1).

<sup>64</sup> *Ibid* s 4(3).

<sup>65</sup> *Ibid* s 4(4).

individual if they reasonably suspect that the individual has been or is likely to be assaulted if a protection order is not issued.

- 2.55 Currently under the Act the interim protection order is served on the respondent by the complainant's legal counsel or the Registrar.<sup>66</sup> Until the interim protection order has been served on the respondent, it has no force or effect.<sup>67</sup> This may not be very practical and as raised in submissions, may also raise safety concerns for these individuals. Furthermore, it risks delays in serving the order and therefore delaying protection of the victim. The current practice is that a police officer from the DVU serves the order on the respondent, which alleviates the safety concerns raised. This should be set out in the Act and that the respondent should be served promptly or at the earliest opportunity.
- 2.56 When serving the order the police also notifies the victim/complainant. However, the police should also be required to inform family members and peers close to the victim or complainant. The importance of notifying these people is so that they may be more vigilant and assist in ensuring the victim/ complainant's safety.
- 2.57 In the event the respondent cannot be located and service cannot be effected promptly, the police should be required to inform the victim/complainant as soon as possible. This is very important so that the victim/complainant and their family members may be aware that their safety is still at risk and continue to be more vigilant.
- 2.58 The monitoring of protection orders to ensure their effectiveness is also an issue as police capacity to do so is often very limited. Police store information on protection orders and rely heavily on family members and peers of the victim to report any breach. In order to ensure protection orders are effective and that the safety of the victim is not compromised the Village *Fono* should also be informed so that they may assist with monitoring to ensure the safety of a complainant. The Commission considers that including this in legislation would signify the importance of the role of the Village *Fono* in addressing domestic violence.
- 2.59 As suggested by the NHRI, including protections in the *Family Safety Act 2013* for persons who report family violence may help to encourage an increased level of reporting. This may in turn help improve access to family violence procedures and deter offenders.
- 2.60 Where a respondent does not appear on a return date<sup>68</sup>, the Court may still issue a protection order. However, the Act is silent where a complainant does not appear on a return date, and in practice the Court sets the order aside. There is a need to consider situations where both the complainant and respondent do not appear at the return date as

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<sup>66</sup> Ibid s 5(4).

<sup>67</sup> Ibid s 5(6).

<sup>68</sup> The 'return date' is the date a Respondent must return to court to show cause as to why a protection order should not be issued.

this could occur for various reasons including fear of the husband or his family. In such circumstances where the complainant's safety is still at risk, the Court should consider extending the return date, unless satisfied that there would be no risk.

- 2.61 The definition of domestic violence in the *Family Safety Act 2013* does not cover financial abuse where victims are denied or have limited access to food, basic needs or financial resources or prevented from pursuing employment or accessing education. Consideration should be given whether this should be legislatively recognized as a form of abuse to provide a more comprehensive definition of domestic violence.

#### *Village Governance*

- 2.62 Women should have equal opportunities to men when it comes to participating in the Village *Fono* and being granted *matai* titles. It is important that women are heard in the same forums as men, particularly in relation to important issues such as violence against women. Without this participation and recognition, women are less able to meaningfully affect decision-making regarding family violence (among other issues) and may continue to be viewed as inferior, without the same rights or value as men.

- 2.63 The discrimination of women from holding *matai* title purely on the basis of gender should be prohibited under the law. In doing so, this is likely to improve women's participation in the Village *Fono* and may give women a stronger voice in village affairs and in raising women's issues such as domestic/family violence.

- 2.64 The Village *Fono* should also be required by law to help enforce protection orders. Furthermore, the Village *Fono* should be encouraged to include offences and recourse for family violence in village bylaws. Given that any fines imposed by the Village *Fono* could ultimately fall on the wider family (including the victim) such a penalty may be counter-productive. Any penalty imposed on a man for family violence should not penalise the woman (at least not directly). Customary penalties should also reflect the seriousness and prevalence of family violence (and increased accordingly) and be applied consistently in cases of family violence.

#### *Alcohol Reform*

- 2.65 The Commission has completed a review on alcohol reform to reduce criminal offending as a result of alcohol abuse<sup>69</sup> which has potential to reduce family violence even further if implemented by Government.

- 2.66 Alcohol was and still is recognised as one of the main contributing factors to domestic violence in Samoa and recommendations by the Commission in its Alcohol Reform Final

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<sup>69</sup> See Samoa Law Reform Commission, *Alcohol Reform Issues Paper*, (2013); Samoa Law Reform Commission, *Alcohol Reform Report*, Final Report 15 (2016).

Report touched on some of the measures to try and control alcohol abuse subsequently reducing criminal offending. Some of the relevant recommendations include improved collaboration between relevant government ministries, NGOs and the Alcohol and Drugs Court (ADC) to develop appropriate rehabilitation programs that aim to curb offender recidivism, education and awareness on the harm of alcohol and how it will affect families both economically and socially, and an emphasis on the role and responsibilities of parents', villages and churches in raising awareness as well. Furthermore, village by-laws targeting alcohol consumption will also contribute to the control of alcohol and reduction of social and economic harm to families and the community caused by result of excessive consumption.

### **Recommendations**

#### *Amendments to the Family Safety Act 2013*

1. Consider whether the definition of domestic violence in the *Family Safety Act 2013* should include economic or financial abuse (for example, denying or limited access to food or basic needs and/or financial resources, or preventing or restricting employment opportunities or access to education) to be consistent with some comparative jurisdictions and to reflect the more nuanced understanding of the nature of domestic violence.
2. The *Family Safety Act 2013* should expressly include a police officer as a person that may act on behalf of a complainant.
3. The *Family Safety Act 2013* should enable a complaint to be made for a protection order whether or not consent is given by the individual affected, where a police officer, child welfare officer, health service provider or social worker reasonably suspects that the individual has been or is likely to be assaulted if a protection order is not issued.
4. Amend the *Family Safety Act 2013* to require Police to serve the respondent the protection order promptly or at the earliest opportunity. In the event the respondent cannot be located and service cannot be effected promptly, the Police should be required to inform the complainant as well as members of her family or people close to her that would help with monitoring.
5. Enable the Court to extend the return date in cases where the complainant does not show up unless the Court is satisfied based on the circumstances that it would be safe to set it aside. This is to take into account legitimate reasons for the complainant's absence such as fear of the husband or his family, and the complainant's safety being at risk.
6. A protection order should be flexible enough to accommodate for situations in which communication between the victim and perpetrator would be required for example in



relation to the care of young children. Recognizing that there is a risk posed to the victim, proper protections need to be in place such as ensuring the perpetrator is aware that improper use of this communication will be treated as a breach of the protection order.

7. Include protections in the *Family Safety Act 2013* for persons who report family violence, which may help to encourage an increased level of reporting.

#### *Village Fono*

8. By laws should be created under the *Village Fono Act* to establish guidelines to deal with perpetrators of domestic violence and to impose a positive duty on the village council to report instances of domestic violence to Police.
9. The *Village Fono* should also be required by law to help enforce protection orders.
10. The *Village Fono* should be encouraged to include offences and recourse for family violence in village bylaws.

### **Commission's Views – Non Legislative Measures**

- 2.67 Some barriers are already being addressed through non-legislative measures including awareness-raising and encouragement of village councils and churches to take action on family violence.<sup>70</sup>

#### *Changing Perceptions and Improved Awareness*

- 2.68 Some of the perceptions that prevent women from seeking protection are warranted, such as fear that their husband will harm them, feeling physically or mentally weak, fear of financial hardship, and fear that they are unable to turn to their extended family for help. However, other perceptions, such as blind devotion to their husband at the risk of their own safety, the belief that not reporting their husband is in the best interests of their children, shame, or the belief that they are at fault or must solve such problems themselves, are not grounded in reason.

- 2.69 The causes behind both types of perceptions need to be addressed. For example, strengthening protection orders might alleviate a woman's fear of ongoing harm, and

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<sup>70</sup> Leasiolagi Malama Meleisea et al, 'Political Representation and Women's Empowerment in Samoa' (2015) vol 1 *Centre for Samoan Studies*, National University of Samoa at 46. For example, the Ministry of Justice and Courts Administration (**MJCA**), SVSG and MWCSO work closely with Village Councils to promote and raise awareness on the domestic violence prevention programs they carry out. Specifically, the MWCSO will be leading a programme to initiate village-level 'community conversations' toward social action against family violence; See also the statement by Samoa's Ombudsman, *Samoa Observer* (Samoa), 10 July 2014.

financial assistance may ease fears of financial hardship. Moreover, awareness programs could help educate women that the shame and the fault is not theirs, that failing to report their husband is not in the best interests of their children, and that they do not have to endure abuse.

2.70 Attitudes of *matai*, family members, police and others that downplay family violence could be addressed through awareness programs, training workshops and by leadership in churches. The Centre for Samoan Studies (CSS) Report identified councils and churches as being most appropriate to take action for prevention of family violence. Churches in particular must also be vigilant in teaching their congregations that the Bible does not condone men beating their wives, and that the idea that it could ever be read as condoning family violence is a farce.<sup>71</sup>

2.71 Actions taken by some churches to prevent family violence include mentoring catechists about how to respond positively to domestic violence cases,<sup>72</sup> and offering counselling for new prisoners discussing ways to try and change their inappropriate behaviour.<sup>73</sup> Many church leaders are community justice supervisors and assist MJCA to promote and raise awareness in villages and monitor offenders carrying out community work in villages.<sup>74</sup>

2.72 Comprehensive awareness raising programs about legal protections and family violence more generally are essential to improving access to family violence protections. Such programs should be developed in consultation with villages and relevant governmental and non-governmental organisations.<sup>75</sup>

2.73 Many programmes to raise awareness and encourage social action against family violence have been conducted by MWCSO and other agencies.<sup>76</sup> For example, a variety of

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<sup>71</sup> Submissions from public consultations.

<sup>72</sup> Secretariat of Pacific Community and UNFPA cited in UN Women, 'Ending Violence in Samoa Roundtable – 2015 EAW Country Review' (2005) at 9.

<sup>73</sup> The Fortress of Faith carries out counselling for inmates. Information received from Samoa Prisons and Corrections Services (1 April 2016).

<sup>74</sup> Telephone interview with Faagutu Vaalotu, ACEO Correction Enforcement and Maintenance, MJCA (Apia, 29 March 2016).

<sup>75</sup> See Lagi Keresoma, 'Samoa Returnees Trust help rehabilitate young offenders', *Talamua Online News* (Apia) online ed., <<http://www.talamua.com/samoa-returnees-trust-help-rehabilitate-young-offenders/>> (Accessed 21/03/2016). The Samoa Returnees Charitable Trust has conducted many awareness workshops in villages including the "Family Violence it's not OK Outreach Program."

<sup>76</sup> See Leasiolagi Malama Meleisea et al, 'Political Representation and Women's Empowerment in Samoa' (2015) vol 1 *Centre for Samoan Studies*, National University of Samoa at 47. Programmes to initiate village-level 'community conversations' toward social action against family violence, to be implemented with leadership from the MWCSO. Also see Secretariat of Pacific Community and UNFPA cited in UN Women, 'Ending Violence in Samoa Roundtable – 2015 EAW Country Review' (2005) at 10. UN Women has carried out some work regarding awareness about ending violence against women and girls including roundtable talks held every month on issues such as domestic violence prevention, funding a 24hr Hotline to help victims by providing counselling and information on where to seek help. UN Women also

awareness programs on family violence prevention targeting different audiences and on how the *Family Safety Act 2013* is designed to assist those in need, have been conducted.<sup>77</sup> Also of great importance, is awareness that seeking a protection order from the Court is free so that the cost does not become an impediment to a complainant. MWCSO provides information and contacts of groups who can help with domestic violence issues, which is done in collaboration with SVSG, MJCA and Police.<sup>78</sup> SVSG village representatives also facilitate 'stronger community' workshops discussing "strategies to combat violence and ways to raise children without violence in the home".<sup>79</sup>

2.74 With improved awareness and changing attitudes, the Village *Fono* would work more collaboratively with Police including in the enforcement of protection orders, and also of any by-laws in place.

2.75 Educating children on the issue of family violence is the responsibility of both families and schools. However there are also other organisations that carry out awareness and education programmes, which should be supported and encouraged.<sup>80</sup>

#### *Training*

2.76 The DVU was set up in 2007 and currently has 14 officers. DVU officers are responsible for receiving domestic violence complaints, filing protection orders, prosecuting interim protection orders, referring victims to shelters and relocating families. DVU also provides trainings for one officer from every outpost on how to properly deal with domestic violence complaints. The last refresher course carried out for the DVU was 5 years ago and are currently looking to carry out another refresher program for officers both at headquarters and the outposts.<sup>81</sup>

2.77 Such training should be ongoing to help change their attitudes towards family violence and to ensure that police respond to complaints of family violence appropriately, and can provide information and contacts of groups who can assist the victim. It is extremely important that outpost officers are trained and equipped with the necessary knowledge and skill to deal with domestic violence matters given that they are usually the first point of

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distributes a Preach (pamphlet) to Ministries to distribute during consultations highlighting specific values such as love, marriage, children and respect and how they are reflected in versus from the bible.

<sup>77</sup> Email from Alanna Seugamatupu, Principal Programs and Training Officer, MWCSO, (Apia, 21 March 2015). The programs target teen moms, mothers and daughters, colleges, primary schools and parents, caregivers, couples, fathers and sons, village council, men and boys.

<sup>78</sup> Ibid.

<sup>79</sup> Zonta International, *Empowering Women in Rural Samoa to Combat Violence* <[http://www.zonta.org/Portals/0/PDFs/04e\\_Samoa%20Description.pdf](http://www.zonta.org/Portals/0/PDFs/04e_Samoa%20Description.pdf)> at 2 (Accessed 29/03/2016).

<sup>80</sup> For example, the Samoa Returnees Charitable Trust runs education programs around schools in Samoa educating kids not to resort to violence and on how to make good choices.

<sup>81</sup> Sina Enoka Tafua, 'Gender Based Violence in Samoa: Domestic Violence Unit Data' (Presentation delivered at the APF Training on Conducting a National Inquiry, Apia, 25 July 2016).

contact for people living in the villages. The practice was to train one officer from each outpost. This number should be increased to ensure that a properly trained officer will be on duty at any time of the day. Police who unduly disregard women's complaints should be reprimanded.<sup>82</sup>

2.78 The DVU is currently working on a policy to deal with domestic violence cases.<sup>83</sup> It is important that the development of such policy is prioritised and completed and in effect as soon as possible, and that it includes ongoing trainings. Such policy should carefully consider the particular needs of outpost officers and the realities they face, as they are often on their own particularly during nightshifts and that internal policies and procedures are in place so that where necessary superiors are informed immediately where necessary.

2.79 Health professionals should also undergo ongoing training to ensure that they are responding to family violence cases appropriately and informing victims of domestic violence of protections under the *Family Safety Act 2013*, and contacts of groups who can assist. Neither the National Health System (NHS) nor MOH currently have any domestic violence policies in place.<sup>84</sup>

#### *Practical Support for Victims*

2.80 There are some shelters and places where victims can seek refuge and assistance to access protections (for example, for calling or getting to police). Public consultations revealed that many women in the villages were aware of SVSG as a place to resort to. Guidance to affected women is offered by SVSG through its village representatives in Upolu, Savaii and Manono-tai. These village representatives are trained to deal with such situations and provide information on support as well as legal protections.<sup>85</sup> Consequently, SVSG assist many victims in lodging applications for a protection order.<sup>86</sup>

2.81 In terms of providing a safe private space for victims of domestic violence to lodge their complaints, private interview rooms and family room are being constructed with funding from the Australian Federal Police for the DVU.

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<sup>82</sup> Email from Sina Enoka Tafua, Officer in Charge of the DVU and Police Superintendent, MoP (Apia, 31 March 2016).

<sup>83</sup> Ibid.

<sup>84</sup> Email from Quandolita Reid-Enari, ACEO Strategic Planning, Policy and Research, MoH (Apia, 29 April 2016).

<sup>85</sup> SVSG, *SVSG Village Representatives*, <<http://www.samoavictimsupport.org/village-representative.html>> (Accessed 18/03/2016).

<sup>86</sup> Papalii John Taimalelagi, 'The importance of the Registrar's Role in expediting the process for applications for Protection Orders; the benefits in a partnership with an Non-Governmental Organisation such as SVSG; and, the role of the Law & Justice Sector as a whole approach in combating SGBV' (Presentation delivered at the PILON SGBV Working Group Meeting, Apia, 3 May 2016).

2.82 Practical support for victims is necessary, however the reality is that the lack of or limited Government funding is normally an impediment. Establishing interactive partnerships between civil society groups, relevant Government ministries and village communities to provide practical support for victims (for example, through temporary accommodation or information) is therefore vitally important and should be encouraged and supported.

*Rehabilitation for Perpetrators of Domestic Violence*

2.83 The judiciary has recognized that the overwhelming majority of family violence cases have led to imprisonment, which in most instances did not address the underlying causes of the offending. The Family Court has now moved towards adopting a rehabilitative approach to perpetrators of domestic violence. The court adjudicated 981 cases of domestic violence with the majority of offenders being referred to SVSG to undergo rehabilitation programs. To date these have proven hugely successful with the rate of reoffending less than 1% in the 3 years since the establishment of the Family Court.<sup>87</sup>

**Recommendations**

11. The Domestic Violence Unit (**DVU**) should implement the following initiatives:

- Prioritise and complete its domestic violence policy, which carefully considers the particular needs and experiences of outpost officers, particularly in quick information-sharing about domestic violence cases with superiors;
- Training for DVU officers on responding to domestic violence complaints, particularly around communicating with victims. Refresher trainings by and for DVU staff should be carried out on an annual basis. These trainings should include a number of police officers in outposts on procedures to properly respond to domestic violence complaints, and should be broadly targeted so that there are a sufficient number of police officers in the outposts at any given time to provide assistance to victims of domestic violence.
- Training for DVU officers on gathering evidence, taking witness statements, uniform procedures on file management in domestic violence cases and presenting that evidence in Court, as well as for protection order hearings.
- Trainings on domestic violence and gender sensitizing issues in general should be incorporated into the police academy program to educate future policeman on underlying issues in domestic violence complaints as well as the proper responses in those situations.

12. Health professionals should undergo ongoing training to ensure that they are responding to family violence cases appropriately and that health service providers have domestic

<sup>87</sup> Justice Leilani Tuala-Warren, 'The Family Court' (Presentation delivered at the APF Training on Conducting a National Inquiry, Apia, 25 July 2016).

violence policies in place.

13. There needs to be a clearer referral process to service providers in handling domestic violence cases which could be achieved through formal memorandums between the key service providers (including Police, National Health Service, Samoa Victim Support Group) to assist in expediting the processing of a domestic violence complaint and prevent cases from withdrawal due to inaction or delayed response.
14. Interactive partnerships between civil society groups, relevant government ministries and village communities need to be established to provide practical support for abused women (for example, through temporary accommodation or information) and that government should commit funding to support such initiatives where necessary.
15. In recognition of the effectiveness of rehabilitation programs in addressing recidivism among perpetrators of domestic violence, proper financial and technical support should be provided to the providers of this program to assist in its ongoing work.
16. The Village *Fono* to work more collaboratively with police to enforce protection orders and also any by-laws in place.
17. Attitudinal change towards domestic violence should be specifically integrated into school curriculums at all levels to positively influence attitudes on intimate relationships and encourage a strict non tolerance for violence within the home.
18. Perceptions based on unfounded reasons preventing women from seeking protection should be addressed through strengthening protection orders, providing financial assistance and also awareness programmes to educate and encourage women that silence is not the solution to domestic violence.
19. Awareness programs, training and leadership programmes should be carried out by churches and the village council to address attitudes of those who downplay family violence. Parents and schools should also educate children on family violence.
20. Comprehensive awareness raising programmes about legal protections should be developed in consultation with villages and relevant governmental and NGOs.
21. Implement recommendations made by the Commission in its Alcohol Reform Report, particularly:
  - Raising awareness and education about the harms associated with alcohol is a must and should be a collaborative effort between the government and relevant government ministries, non-governmental organisations (**NGOs**), the Alcohol and Drugs Court (**ADC**) and the wider community.
22. The *Village Fono* should consider implementing by-laws to target alcohol consumption that

will help reduce alcohol-related issues, in particular domestic violence.

23. A concerted effort should be made towards proper data collection by DVU for future research and policy development purposes. Furthermore, DVU should establish a data collection mechanism to obtain data from the outposts in Upolu and Savaii (for example, through monthly reports to DVU headquarters) to ensure comprehensive nationwide data is obtained.

## **B. Sexual Violence**

***CEDAW Articles relevant to this Part include Articles 1 and 2***

- ***Article 1: definition of ‘discrimination against women’***
- ***Article 2: to uphold principles of CEDAW and a legal framework to protect against discrimination***

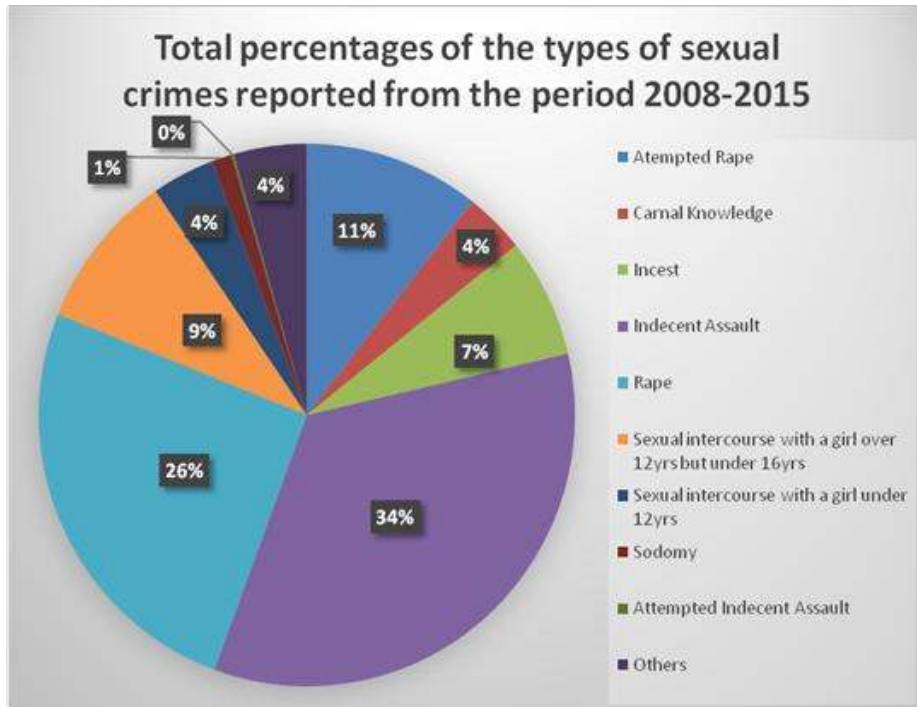
***See Appendix 1 for full text***

2.84 Sexual violence relates to the sexual crimes provided in Part 7 of the *Crimes Act 2013*. Figure 1 illustrates the various types of sexual offences under that Part that were reported between 2008 and 2015. Figure 1 indicates that indecent assault (at 34%) and rape (at 26%), were the two most common types of sexual offences reported during that period.<sup>88</sup>

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<sup>88</sup> Criminal Investigation Department, MoP, *Sexual Cases Statistics 2008-2015* (2016).

Figure 1:



**Source:** Criminal Investigation Department, Ministry of Police, 2016. \*Others include indecent act, assault with intent to commit sexual violation, sexual connection, sexual violation, cybercrime/indecent publication

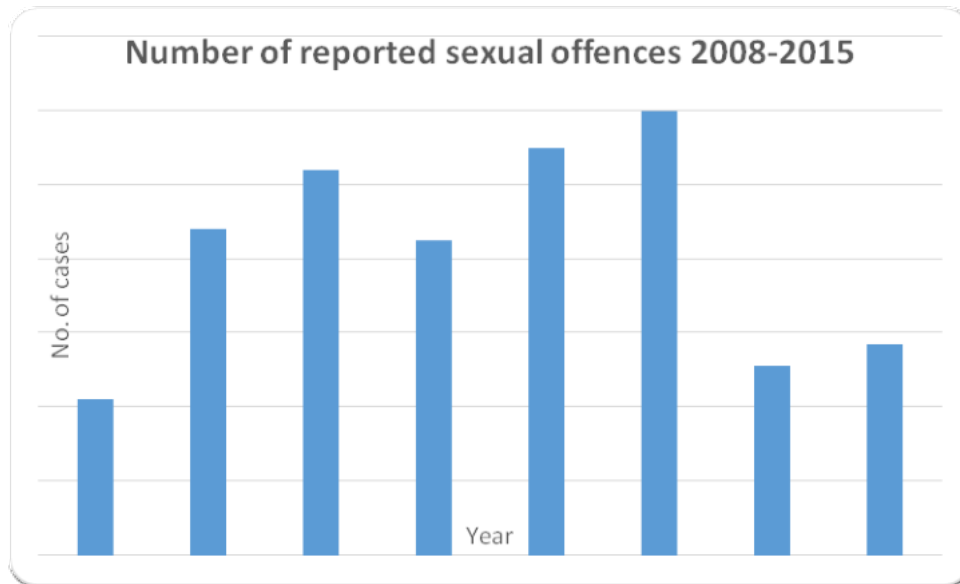
2.85 Figure 2 illustrates the total number of reported offences of a sexual nature in the period 2008 to 2015.<sup>89</sup> The year 2013 showed a record high of 120, with a significant drop in the two years that followed although the reason why is not clear.

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<sup>89</sup> Ibid.



Figure 2:



**Source:** Criminal Investigation Department, Ministry of Police, 2016.

#### Legislation

2.86 As with family violence, Samoa’s laws regarding sexual violence have recently been reviewed and are now largely consistent with CEDAW obligations and relevant Legislative Compliance Indicators.<sup>90</sup>

2.87 Some significant changes now set out in the *Crimes Act 2013* include that a person can be convicted of sexual violation of another person notwithstanding that those persons were married to each other at the time.<sup>91</sup> This goes some way to achieving the Legislative Compliance Indicator that recommends legislation prohibiting the use of prior sexual conduct to establish consent;<sup>92</sup> in this circumstance that past consent in marriage does not constitute ongoing consent.

2.88 Furthermore, sexual violation in the form of unlawful sexual connection with another person without the consent of that person does not require penetration.<sup>93</sup> The circumstances which do not amount to consent are also expressly set out.<sup>94</sup> For example, it is not consent merely because the person does not protest or physically resist; or where it is extorted by fear harm or threats; or personating the person’s spouse or partner; or the

<sup>90</sup> See CEDAW Legislative 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, Appendix 2.

<sup>91</sup> *Crimes Act 2013* (Samoa) s 49(4).

<sup>92</sup> See CEDAW Legislative Compliance Indicators 2.22(b), and ‘Old Indicator numbers’ 1.21, Appendix 2.

<sup>93</sup> *Crimes Act 2013* (Samoa) s 49(3).

<sup>94</sup> *Ibid* s 51(1) and (2). Note that although there is no express legislative prohibition on the use of prior sexual conduct to establish consent as required by CEDAW Legislative Compliance Indicator 2.21 the circumstances which do not in themselves amount to consent are expressly set out.

person is unconscious or affected by alcohol or other drug to the extent that he or she cannot choose to consent; or the person is affected by an intellectual, mental or physical impairment such that he or she cannot choose to consent.<sup>95</sup>

2.89 The penalties for sexual related offences have also been generally increased under the new *Crimes Act 2013*, reflecting the seriousness of these offences.<sup>96</sup>

2.90 Other legislative developments include the *Evidence Act 2015* which provides that corroborated evidence on which the prosecution relies is generally not necessary in a criminal proceeding (except in cases of perjury or treason).<sup>97</sup> Until this recent development, Samoa's legislation did not fully comply with Legislative Compliance Indicators which suggested a legislative prohibition on the requirement for corroboration.<sup>98</sup>

2.91 Under the *Village Fono Act 1990*, the Court must take into account in mitigation of sentence, any punishment imposed by the Village *Fono*. Customary reconciliation such as *ifoga* has resulted in a reduction of sentence in cases involving violence against women (for example, domestic violence, sexual violence, etc).<sup>99</sup> However, Legislative Compliance Indicators suggest that customary practices of forgiveness (such as an *ifoga*) shall not affect criminal prosecution or sentencing.<sup>100</sup> Furthermore, commentary around the Compliance Indicators suggests that recognition of *ifoga* as a mitigating factor may prevent adequate sanctions being imposed on perpetrators of violence against women.<sup>101</sup>

2.92 Similar to family violence, factors such as requiring complaints to be laid with the Village *Fono* instead of police in the first instance and excluding women's voices in public and political life may also prevent the reporting of sexual violence and the laws from working to their full effect.

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<sup>95</sup> Ibid.

<sup>96</sup> Ibid ss 53, 55-56, 58-59. 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.

<sup>97</sup> *Evidence Act 2015* (Samoa) s 98.

<sup>98</sup> See CEDAW Legislative Compliance Indicators 2.22(b), and 'Old Indicator number' 1.22, Appendix 2.

<sup>99</sup> See for example, *Police v Moatoga* [2012] WSSC 61; *Police v Lauvao* [2011] WSSC 75.

<sup>100</sup> Vedna Jivan and Christine Forster, 'Translating CEDAW Into Law: CEDAW Legislative Compliance In Nine Pacific Island Countries' (May 2007) UNDP Pacific Centre and UNIFEM Pacific Regional Office, Suva Fiji at 17; See also 'Old Compliance indicator' 1.30, Appendix 2. Note this is not required by the language of the relevant Article.

<sup>101</sup> Ibid.

### *Sex Offender Register*

2.93 The Commission has also completed a review on the need to establish a Sex Offenders Register (**SOR**) in Samoa,<sup>102</sup> which has potential to reduce sexual violence even further if implemented by Government.

2.94 The establishment of a SOR is recommended to assist in the reduction of sexual violence in the country and the likelihood of sexual offenders to re-offend. The purpose of an SOR is to assist with law enforcement and crime prevention, the investigation and prosecution of sex offences, and to monitor and manage sex offenders in the community as well as an aid to the courts.

2.95 Furthermore, information contained on the SOR will better inform Government on the prevalence of sex crimes and allow them to incorporate this information into decision-making on policies like developing effective rehabilitation programs for offenders and expanding services to those affected by sexual violence.

### **Submissions**

2.96 In its Discussion Paper and during public consultations, the Commission specifically sought submissions on the following:

- *Should customary reconciliation such as ifoga continue to be taken into account as a mitigating factor in sentencing (i.e. to reduce sentences) in cases of violence against women, particularly in cases of sexual offending?*

2.97 An overwhelming majority of people consulted were of the view that customary reconciliation such as *ifoga* or penalties imposed by the village should not be taken into account as a mitigation factor to reduce sentences in cases of violence against women, particularly cases of sexual violence, and that this should be removed entirely from the *Village Fono Act 1990*. This was echoed by SVSG in its written submission:<sup>103</sup>

*. . . the Village Fono [Amendment] Act plays a very important part in village governance as well as maintaining peace and harmony within village communities. However, SVSG submits that in cases of sexual offending, the customary reconciliation such as ifoga should not be taken into account as a mitigating factor in the formal justice system sentencing.*

*SVSG deals with survivors of sexual offending on a daily basis. We see the trauma, the loss and the pain in these survivors face. SVSG accepts the ifoga in keeping the peace*

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<sup>102</sup> See Samoa Law Reform Commission, *Sex Offender's Register Final Report*, 2015.

<sup>103</sup> SVSG (Written submission 2015).

*within families and villages, however, taking it further as a mitigating factor in sentencing of sexual offending cases is like condoning the magnitude of these acts on the lives of the survivors.*

2.98 Some also believed that customary reconciliation should not be considered as a mitigating factor in any sentencing, whether or not the crime is one of violence against women. It was considered that village punishments and court sentencing should remain independent of one another, so that punishment imposed by the courts remains unhindered by such cultural practices.

2.99 An *ifoga* is normally performed by families of the offender to seek forgiveness from the victim's family, and to preserve peace between the offender and the victim and their respective families.<sup>104</sup> It was therefore argued by some that as the burden is normally borne by the extended family, it would be unjust to reduce the offender's sentence as a result of the *ifoga*. Many stressed that it should be the offender alone who is punished, and not the whole family. Furthermore, an offender from a wealthy family would disproportionately benefit and face less punishment for breaking the law, due to their being in a better position to afford any penalties imposed by the village.

2.100 It was also considered that the acceptance of customary reconciliation to reduce a sentence could have little or no rehabilitative or reformatory impact on the offender.<sup>105</sup> This was particularly so where the individual offender may not directly contribute, for example to a financial penalty imposed by the village as punishment.

2.101 Further, submissions raised that the choice of whether to accept an *ifoga* and 'forgive' the offender, is rarely made by the victim but is instead a collective decision by the family. Allowing an *ifoga* to reduce sentencing could imply that the pain and suffering of a victim (predominantly women) is secondary to keeping peace and harmony between families and in the village.<sup>106</sup> It was heavily emphasised that although forgiveness and reconciliation between families is important, it did not negate the need for offenders to receive the full sentence appropriate and proportionate to their crime.

2.102 Many consulted maintained that penalties for crimes of violence against women, especially sexual violence, should instead be increased as a deterrent, particularly for repeat offenders. It was also raised that leaving court sentences unaffected by the practice of *ifoga* or other customary practices is important as a deterrent. On this point, MWCSO submitted

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<sup>104</sup> Hon. Chief Justice Patu Tiavaasue Falefatu Maka Sapolu, 'General Address' (Speech delivered at the Australasian Law Reform Agencies Conference, Apia, 2014) at 10.

<sup>105</sup> Pan Pacific and Southeast Asia Women's Association (**PPSEAWA**) (Written submission 2015); MWCSO (Written submission 2015).

<sup>106</sup> Lani Wendt Young (Written submission 2015).

that unlike a court sentence, the practice of *ifoga* does not offer protection to a victim or to the public.<sup>107</sup>

2.103 There were also those who believed that law requiring the Court to take customary reconciliation into account in mitigation of sentence should remain but that the Court also be required to give due consideration to the interest of the victim. In this regard, NHRI stated:

*In general, cultural practices such as ifoga have the potential to improve community linkages to the offender and link to community oversight which may result in a reduced risk of reoffending. However, when it is allowed as a mitigating factor there is a risk that judges could be too lenient and not sentence the offender to an adequate personal punishment. We would ask that judges use their discretion widely in mitigating sentences based on customary reconciliation such as ifoga and give due consideration to the interests of the victim.*

2.104 It was strongly maintained that while customary practices such as *ifoga* should not mitigate court sentencing, they should continue to be practised in the village setting as an important part of village governance for *vafealoai* (relationships between families), and it encourages villages to take offences seriously.

### **Commission's views**

2.105 Samoa's legislative framework is largely consistent with CEDAW obligations and Legislative Compliance Indicators in light of recent developments which include:

#### *Crimes Act 2013:*

- Provided for the increase in penalties for sexual related offences to adequately reflect the seriousness of the offences;
- Provided for an offence of sexual violation where the victim is the perpetrator's spouse;
- Provided that sexual violation in the form of unlawful sexual connection with another person without the consent of that person does not require penetration.

#### *Evidence Act 2015:*

- Provides that corroboration of evidence is generally not necessary in a criminal proceeding.

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<sup>107</sup> MWCSO (Written submission 2015).

Sex Offenders Register Final Report:

- The Commission completed a review on the need to establish a SOR in Samoa which will assist in the reduction of sexual violence in the country and the likelihood of recidivism among sex offenders.

2.106 The Commission agrees with the majority of submitters and public consulted that customary practices such as *ifoga* should not be taken into account to reduce court sentences in cases of violence against women and that it may in fact prevent adequate sanctions being imposed on perpetrators of violence against women. Furthermore, the Commission considers that this should apply across the board for all violent offences and in particular sexual offences, or the seriousness of this type of offending may otherwise be undermined, not to mention the suffering of the victim.

2.107 In addition, the Commission considers that customary reconciliation is not necessarily related to the offender's remorse and is often performed by the offender's family not the offender themselves. Moreover offenders from wealthier families may benefit disproportionately.

**Recommendations**

24. The *Village Fono Act 1990* should be amended to exclude consideration of customary practices (for example, penalties imposed by the Village *Fono* and *ifoga* by the offender's family) in sentences imposed in cases of violence against women (including sexual violence).

25. Programmes relating to domestic violence, anger management, alcohol and drugs abuse should be developed and different types of rehabilitation programs to try and change negative behaviours of inmates should be carried out in prisons.

26. Implement Recommendations made by the Commission in its Sex Offenders Register Report particularly:

- Establishing a register for law enforcement and crime prevention, investigate and prosecute sex offences, reduce likelihood of re-offending and monitor sex offenders in the community.
- Update sexual offending and re-offending information by relevant government ministries to allow government to be better informed about the decisions to be made to address the prevalence of sex crimes such as developing appropriate and effective rehabilitative initiatives for offenders.

## C. Trafficking and Prostitution

**CEDAW Articles relevant to this Part include Article 6:**

**- Article 6: appropriate measures( including legislation) to prevent and address the exploitation of women through trafficking and prostitution**

**See Appendix 1 for full text**

- 2.108 Part XIII of the *Crimes Act 2013* introduced new offences specifically targeting exploitation through trafficking. The Act criminalises trafficking in people by coercion or deception, and also creates a specific offence for dealing with a person under 18 for sexual exploitation, forced labour, or the removal of body parts.<sup>108</sup> These offences are punishable by up to 14 years imprisonment.
- 2.109 Prostitution is criminalised in Samoa, punishable by up to 3 years imprisonment.<sup>109</sup> Solicitation, defined as where a person offers or agrees to pay for sexual intercourse or sexual connection, is also an offence, punishable by up to 5 years imprisonment.<sup>110</sup> However, the Act expressly provides that a male cannot be convicted of solicitation in respect of any sexual intercourse or sexual connection with his wife.<sup>111</sup> Furthermore, it is not an offence to procure a woman or girl to have sexual intercourse with her husband.<sup>112</sup> Living on the earnings of the prostitution of another person, and the procurement of any woman or girl to have sexual intercourse with any male are also offences, punishable by up to 10 years and 7 years imprisonment respectively.<sup>113</sup>
- 2.110 The CEDAW Committee noted that sex workers are particularly vulnerable where their status is unlawful.<sup>114</sup> However, decriminalisation is not an express requirement of CEDAW or advised by the CEDAW Committee in its commentary; nor is it included as a Compliance Indicator in the updated list by UN Women (Pacific). The obligation under CEDAW is to take 'all appropriate measures' to suppress the exploitation of prostitution of women, and what is appropriate needs to be assessed in Samoa's context.

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<sup>108</sup> *Crimes Act 2013* (Samoa) ss 155 and 157.

<sup>109</sup> *Ibid* ss 72-75;

<sup>110</sup> *Crimes Act 2013* (Samoa) s 73(1). However solicitation by a male in respect of any sexual intercourse or sexual connection with his wife is excluded under s 73(2).

<sup>111</sup> *Ibid* s 73(2).

<sup>112</sup> *Ibid* s 75.

<sup>113</sup> *Ibid* ss 74 and 75. The penalty was previously 3 years under the Crimes Ordinance. Note it is not an offence to procure a woman or girl to have sexual intercourse with her husband under s 75.

<sup>114</sup> CEDAW Committee, General Recommendations (CEDAW) *GR No. 19: Violence Against Women* (1992) <<http://www.un.org/womenwatch/daw/cedaw/recommendations/recomm.htm>>. For this 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).

## Submissions

2.111 In its Discussion Paper the Commission sought submissions on the following:

- *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?*

Unless otherwise stated the points noted are from submissions received.

2.112 NHRI submitted that the regular collection of statistical data on the prevalence of trafficking and sexual exploitation of women, disaggregated by age and region (urban/rural), and relationship between victim and perpetrator, is the first step in protecting the rights of women engaged in sex work.<sup>115</sup> Similarly, Pan Pacific and Southeast Asia Women's Association (**PPSEAWA**) submitted that data from the MOH on the safety and sexual health of sex workers is necessary including interviews with sex workers on their views of this issue.<sup>116</sup>

2.113 NHRI suggested that assistance should be sought from the United Nations Office on Drugs and Crime (**UNODC**) to develop comprehensive national anti-trafficking legislation and strategies, and its implementation.<sup>117</sup>

2.114 As living on earnings from prostitution is an offence, SFA emphasised the need to ensure that where a woman carried out sex work to feed her family, her family should not be captured by that provision as living off the earnings of prostitution.<sup>118</sup>

2.115 Emphasis on the importance of combating discrimination and stigma faced by sex workers was also made by MWCS D in their submission. This is to ensure that despite sex work being unlawful, any sex worker should have the same ability to access all the services available and not be stigmatized because of her unlawful status.<sup>119</sup>

## Commission's views

2.116 Due to a lack of data collection it is difficult to gauge to what extent women are exploited through trafficking and prostitution in Samoa and to determine what legislative measures are necessary to protect women. This issue was raised by the CEDAW Committee,

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<sup>115</sup> NHRI (Written submission 2015).

<sup>116</sup> PPSEAWA (Written submission 2015).

<sup>117</sup> NHRI (Written submission 2015).

<sup>118</sup> Samoa Faafafine Association (**SFA**) (Written submission 2015).

<sup>119</sup> MWCS D (Written submission 2015).



who raised the need for adequate data collection to assess whether current provisions are effective, whether such incidents are in fact being investigated and prosecuted, and to address the root causes for trafficking and prostitution.<sup>120</sup> Consistent with NHRI's recommendations, the Commission considers that statistical data on the prevalence of trafficking and sexual exploitation of women should be collected regularly, to assist in determining legislative measures necessary for the protection of women from such exploitation in compliance with CEDAW obligations.

2.117 Women engaged in sex work should not be discriminated against in their access to services, for example, in access to health care. However, again data on this issue would be useful to determine whether this is in fact an issue in Samoa, and if so, how best to address this.

2.118 The Commission considers that the offence of living on the earnings of prostitution should not capture children of the sex worker and should be clarified in legislation. However the Commission considers it important to ensure that pimps (including a spouse of the sex worker or other family members) continue to be captured by this provision.

2.119 The Commission notes that the wording of exceptions to the offences of solicitation and procurement should focus on protection from unlawful sexual conduct, however it distinguishes the lawfulness or unlawfulness of the conduct based on marital status.<sup>121</sup> For example, procurement is criminalised *unless* it is of a woman to have sex with her husband.<sup>122</sup> The Commission considers that distinction based on marriage does not appear to recognise the autonomy and dignity of a married woman and does not appear to be in line with the spirit of CEDAW. Furthermore, the wording indicates that prostitutes are only women.

2.120 Sexual exploitation and prostitution are prohibited and penalised through criminal law, which according to relevant Compliance Indicators suggests full compliance.<sup>123</sup> Furthermore, decriminalising prostitution would not necessarily on its own address the underlying issues that lead women to enter the prostitution industry in the first place. In addition, evidence from other countries does not show that decriminalisation makes it safer for sex workers (as the opposite appears to be the case)<sup>124</sup> and research showing how legal prostitution is linked to human trafficking continues to mount.<sup>125</sup>

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<sup>120</sup> CEDAW Committee, 'Concluding Observations of the Committee on the Elimination of Discrimination against Women: Samoa', 52<sup>nd</sup> sess, UN Doc CEDAW/C/WSM/CO/4-5 (9-27 July 2012) <<http://www2.ohchr.org/english/bodies/cedaw/docs/co/CEDAW-C-WSM-CO-4-5.pdf>> (Accessed 7/12/2015) at [25].

<sup>121</sup> *Crimes Act 2013* (Samoa) ss 73(2) and 75.

<sup>122</sup> *Ibid* s 75.

<sup>123</sup> See CEDAW Legislative Compliance Indicators 6.1-6.3, Appendix 2.

<sup>124</sup> Equality Now, *Does legalizing prostitution protect women and girls? Findings from countries and states where prostitution is legal* (2012)

## Recommendations

27. Data should be regularly collected on the prevalence of trafficking and sexual exploitation of women, disaggregated by age and region, and relationship between victim and perpetrator.
28. It should be clear under the *Crimes Act 2013* that the offence of living on the earnings of prostitution should not capture children of the sex worker; however it may continue to capture a spouse of the sex worker or other family members who does so.
29. Make prostitution and solicitation provisions under the *Crimes Act 2013* gender-neutral.

## D. Harassment of Women

***CEDAW Articles relevant to this Part include Article 2 and 11***

- ***Article 2: to uphold principles of CEDAW and a legal framework to protect against discrimination***
- ***Article 11: to ensure women have the same rights as men to work, health and safety in working conditions***

***See Appendix 1 for full text***

### *Employment*

2.121 Employment in the private sector is regulated under the *Labour and Employment Relations Act 2013* which provides some protection against harassment.<sup>126</sup> Under that Act, an employee's service can be terminated for sexual or other physical, verbal or mental harassment of employees or the employers.<sup>127</sup> Alternatively, an employee can cease working without notice where he or she is subject to harassment by the employer.<sup>128</sup> If this occurs, the employer must pay the employees earned wages.<sup>129</sup>

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<[http://www.equalitynow.org/sites/default/files/Does\\_Legalizing\\_Prostitution\\_Protect\\_Women\\_and\\_Girls\\_EN.pdf](http://www.equalitynow.org/sites/default/files/Does_Legalizing_Prostitution_Protect_Women_and_Girls_EN.pdf)> (Accessed 12/12/2015).

<sup>125</sup> Seo-Young Cho and Axel Dreher, *Does legalized prostitution increase human trafficking?* 1 (2013)

### *World Development*

<<http://www.lse.ac.uk/geographyAndEnvironment/whosWho/profiles/neumayer/pdf/Article-for-World-Development-prostitution-anonymous-REVISED.pdf>> (Accessed 12/12/2015).

<sup>126</sup> *Labour and Employment Relations Act 2013* (Samoa) s 2 (Harassment means any unwelcome and offensive conduct that includes the fear of harm or serious disturbance to a fellow employee and includes the conduct of a sexual nature; an offensive joke or name calling; physical assault or threat; intimidation; ridicule or mockery; insult; offensive object or picture; interference with work performance).

<sup>127</sup> *Ibid* s 57(1).

<sup>128</sup> *Ibid* s 57(2).

<sup>129</sup> *Ibid* s 57(3).

2.122 While some legal protection against sexual harassment is provided, the Act does not provide any redress for an employee who has been subject to harassment by their employer, nor does it authorise an employee to take direct action against another employee for harassment.<sup>130</sup> Furthermore, in practice the process to make a complaint for sexual harassment is the same process for general complaints concerning working conditions.<sup>131</sup> Ministry of Commerce Industry and Labour (**MCIL**) (responsible for the administration of the Act) advised that any sexual harassment complaints they receive are dealt with under section 57 of the Act and a breach of this section forms the basis of their recommendations to the employer about what action to take.<sup>132</sup> If appropriate the Ministry will refer to police for further action.<sup>133</sup> Apparently to date, the Ministry has not received any sexual harassment complaints in the workplace, nonetheless the Ministry informed that it is currently in the process of gathering data to formulate a policy paper in the coming financial year. The Ministry has also encouraged businesses and companies to have in place their own internal polices appropriate to the nature of their working environment.<sup>134</sup>

2.123 Employment in the public service is regulated under the *Public Service Act 2004*. Employees are required to comply with a code of conduct that includes a requirement to treat everyone with respect and courtesy and without coercion and harassment.<sup>135</sup> Employers are also required to provide a safe working environment.<sup>136</sup>

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<sup>130</sup> An employee may be dismissed for such harassment; *Labour and Employment Relations Act 2013* (Samoa) s 2 (definition of ‘misconduct’). However, this does not provide redress for an employee who has suffered from such harassment.

<sup>131</sup> CEDAW Legislative Compliance Working Group, Samoa Law Reform Commission, *Scribed Document: Discussion into Articles 11 – 16* (2014); Jacinta Matulino, Principal Labour Inspector Industrial Relations, MCIL informed that there is a complaints process for issues arising out of working conditions however there is no specific mechanism for sexual harassment complaints.

<sup>132</sup> *Labour and Employment Relations Act 2013* (Samoa) s 57 (*misconduct and abuse* refers to (1) An employer may terminate the services of an employee without notice nor payment instead of notice where the employee: (a) wilfully breaches his or her terms and conditions of employment; or (b) wilfully disobeys a lawful instruction given by the employer or the managerial personnel within the place of employment; or (c) continuously under performs with respect to his or her duties; or (d) wilfully misleads the employer in relation to his or her qualifications or work experience; or (e) is absent from the place of employment, without reasonable excuse made known to the employer, for at least three (3) consecutive days. (2) An employee may cease his or her service to an employer without notice, where an employee is subjected to physical, mental or verbal abuse or harassment by the employer at any time or place. (3) Where an employee ceases to work for an employer under subsection (2), the employer must not retain nor refuse to pay any earned wages pertaining to that employee).

<sup>133</sup> It is not clear whether this has been done before.

<sup>134</sup> Email from Helen Uiese, MCIL (Apia, 7 July 2016).

<sup>135</sup> *Public Service Act 2004* (Samoa) s 19. The Commission was informed by Public Service Commission that it did not have a policy on sexual harassment, however, a survey on harassment in the workplace was recently carried out, which may result in the development of a specific policy on harassment if results reveal that sexual harassment is an issue in the workplace. The Public Service Commission notes that

Employees have access to a grievance system under that Act, with grievance procedures provided in the Public Service Commission (**PSC**) Discipline Manual.<sup>137</sup>

2.124 The *Occupational Safety and Health Act 2002* applies to all employers and employees both in the public and private sector, and provides for the safety, health and welfare of people at work.<sup>138</sup> Here a duty of care is placed 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.<sup>139</sup>

2.125 The *Ombudsman Act 1988* provides recourse for people to lodge a complaint if they have been victimised.<sup>140</sup> Under this Act, 'victimisation' includes 'being harassed'<sup>141</sup> or where there has been a violation of their human rights.<sup>142</sup>

### **Submissions**

2.126 In its Discussion Paper the Commission sought submissions on the following:

- *Is there any area in which stronger legislation (as opposed to policy) would be beneficial to ensure the guarantees currently provided are realised?*
- *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?*

2.127 MWCSO considered that "there needs to be a proper definition of sexual harassment in Samoa so that women do understand the extent of inappropriate behaviour or touching that is defined as sexual harassment." It submitted that this would enable women to "be better positioned to take action when sexually harassed in the workplace."<sup>143</sup>

2.128 NHRI maintained that sexual harassment of women in the workplace should be addressed through both legislative and policy measures. It recommended:

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sexual harassment would broadly be captured under the values, principles and code of conduct in the *Public Service Act 2004*.

<sup>136</sup> *Public Service Act 2004* (Samoa) s 18.

<sup>137</sup> *Ibid.*

<sup>138</sup> *Occupational Safety and Health Act 2002* (Samoa) Long title and s. 3.

<sup>139</sup> *Ibid* s 11.

<sup>140</sup> *Ombudsman Act 1988* (Samoa) s 63.

<sup>141</sup> *Ibid* s 33(b).

<sup>142</sup> *Ibid.*

<sup>143</sup> MWCSO (Written submission 2015).

*. . . develop legislation to prohibit sexual harassment in the workplace and require all workplaces to have a sexual harassment policy in place.*

*That MWCSO and MCIL conduct an education campaign to increase awareness of what sexual harassment constitutes and inform victims of how they can report and seek redress for sexual harassment.*

2.129 The PSC (responsible for administering the *Public Service Act 2004*) informed the Commission that it does not have in place a sexual harassment policy. PSC noted that there is no data to show that sexual harassment is an issue faced by women in the public service and that a survey of all Ministries on harassment in the workplace was carried out in 2015. The outcome of the survey has not yet been published however the Commission indicates that if the survey reveals harassment as an issue in the workplace, a policy will be developed by the PSC to address it.

2.130 PPSEAWA commented that it was unsure about the prevalence of sexual harassment in the workplace as there is no data available. It agreed however that women who are sexually harassed should have further legal remedies in criminal and civil law. SFA submitted that the *Labour and Employment Relations Act* should also contain mechanisms to ensure that any measures or protections are realised and that offenders are punished. NHRI also noted that any legislation should provide women with a civil remedy to redress sexual harassment and that a confidential complaints mechanism for women to report sexual harassment should also be considered.

### **Commission's views**

2.131 Whilst sexual harassment is dealt with under the *Labour and Employment Relations Act 2013*, *Public Service Act 2004* and the *Ombudsman Act 1988*, thereby complying with Samoa's obligations under CEDAW, there is still room for improvement.

2.132 For example, a criminal offence of harassment should be considered particularly for the more serious types of harassment, for example where a person is being stalked and fears for his or her personal safety – which may not necessarily be limited to the work place. Furthermore, legislation empowering the court to issue restraining orders, requiring an apology, for less serious types of harassment cases, should also be considered, as well as reimbursement of lost wages and compensation (including damages for humiliation and pecuniary loss). Currently the only available remedy of sorts for an employee harassed by their employer is to cease working. Legislation should also capture situations where an employee is subject to harassment by other employees, and not just the employer.

2.133 The PSC has indicated that if the survey they carried out in 2015 reveals harassment as an issue in the workplace, a policy will be developed to address it. However, the Commission

is of the strong view that regardless of the outcome of the survey, appropriate policies on sexual harassment should be developed which should be applied broadly across Government agencies in order for these legislative provisions to be given practical effect.<sup>144</sup> Such agencies should also be encouraged to develop their own internal policies to further protect their workplace against sexual harassment. Similarly employers in the private sector should be required to do so, so that all workplaces have in place effective policies and programmes against sexual harassment.

2.134 Policies should provide guidance on how to identify sexual harassment and also about making a complaint (which should be confidential). It should also address who to raise it with, and how it may be resolved for example by mediation or making a complaint to the Ombudsman and where more information can be found. Employers must ensure that all staff are aware of the organisation's policy and procedures against sexual harassment.

2.135 The Commission strongly supports NHRI's recommendation to conduct an education campaign to increase awareness around sexual harassment in the workplace, which could be carried out in conjunction with the rolling out of any new policies.

#### **Recommendations**

30. Protection from harassment should be strengthened under the current legislation, by making sexual harassment (whether in the work place or elsewhere) a criminal offence and including civil remedies and redress for an employee who has been subject to harassment by their employer. It should also clearly capture sexual harassment by other employees.

31. There needs to be increased awareness and training on sexual harassment. All employers (including Government and private sector) should have in place appropriate policy and procedures against sexual harassment, and ensure that all staff are aware and trained in such policies and procedures. These should provide information on:

- how to identify sexual harassment;
- making a complaint (which should be confidential);
- address who to raise it with, and how it may be resolved for example by mediation or making a complaint to the Ombudsman and where more information can be found;
- collecting and storing data on sexual harassment incidents

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<sup>144</sup> See CEDAW Legislative Compliance Indicator 11.3, Appendix 2.

## Education

2.136 The *Education Act 2009* requires schools to provide a safe teaching and learning environment.<sup>145</sup> However processes and procedures for reporting harassment in schools are either not established in schools, or are not well known by students and teachers alike.<sup>146</sup>

2.137 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.<sup>147</sup>

## Submissions

2.138 In its Discussion Paper the Commission sought submissions on the following:

- *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?*
- *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?*

2.139 The Commission did not receive any submissions specifically on sexual harassment in schools, although some submissions suggested that sexual harassment be a criminal offence. Many submissions suggested the need for appropriate policy and procedures against sexual harassment and ensure that all staff and teachers are aware of such policies and procedures, and follow clear guidelines and procedures when reporting incidents.

## Commission's views

2.140 Children and students have the right to feel safe and secure at school, and a safe environment is more conducive towards a child's learning. The Commission considers that it is of vital importance that policies and procedures to ensure a child's safety in school are developed with input gained from the whole school (including teachers, students, parents, the local community and Ministry of Education Sports and Culture (**MESC**)) and applied consistently.

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<sup>145</sup> *Education Act 2009* (Samoa) s 22.

<sup>146</sup> CEDAW Legislative Compliance Working Group, Samoa Law Reform Commission, *Scribed Document: Discussion into Articles 11 – 16* (2014).

<sup>147</sup> CEDAW Committee, *'Concluding Observations of the Committee on the Elimination of Discrimination against Women: Samoa'*, 52<sup>nd</sup> sess, UN Doc CEDAW/C/WSM/CO/4-5 (9-27 July 2012) <<http://www2.ohchr.org/english/bodies/cedaw/docs/co/CEDAW-C-WSM-CO-4-5.pdf>> (Accessed 7/12/2015) at [28]. However, note that it is not clear what information this concern is based on.

2.141 MESC is still finalising its 'National Violence Free Policy' for schools<sup>148</sup> which the Commission has been informed could meet CEDAW obligations, particularly if it includes appropriate mechanisms to allow action to be taken by or on behalf of girls who are unsafe or discriminated against at school. NHRI has affirmed this as a positive initiative to address all forms of violence and discrimination in schools, including sexual abuse.

2.142 The *Child Care and Protection Bill* currently being developed by MWCSO is another initiative consistent with CEDAW. This draft Bill 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.<sup>149</sup>

**Recommendations:**

32. Ministry of Education Sports and Culture (**MESC**) to finalise its 'National Violence Free Policy' for schools, ensuring input from the whole school (including teachers, students, parents, the local community and Ministry of Women Community and Social Development (**MWCSO**)) and that it covers sexual harassment. Once the Policy is finalised and rolled out, it should be accompanied by training for staff, with awareness raising programs developed for students and the local community. This should include particular focus on conduct that constitutes sexual harassment, reporting sexual harassment and complaints processes. Guidelines and procedures for reporting and responding to sexual harassment incidents may also need to be developed.

33. The Recommendation for a separate offence for sexual harassment, as identified above for employers, should also extend to teachers and cover conduct that falls short of criminal conduct under the *Crimes Act 2013*. For example, teachers should be prohibited from engaging in grooming conduct with students. This would include exposing children to indecent material, providing them with an intoxicating substance or inappropriately giving gifts with the intention of engaging in sexual activity. The Commission notes that this should apply to boys and girls alike.

<sup>148</sup> Due to be completed by the end of the 2015 financial year. (Telephone interview with MESC Policy Division (Apia, 2016)).

<sup>149</sup> Samoa Law Reform Commission, *Convention on the Elimination of Discrimination Against Women Discussion Paper*, Discussion Paper 03 (2015) at 29.



## E. Abortion

### **CEDAW Articles relevant to this Part include Article 12**

- **ARTICLE 12: to ensure that both men and women have equal rights in relation to healthcare services including reproductive health**

**See Appendix 1 for full text**

2.143 The CEDAW Committee in its Concluding observations in July 2012 expressed concern that Samoa's law may result in women seeking unsafe and illegal abortions.<sup>150</sup> At the time, the *Crimes Ordinance 1961* was still in force and a person guilty of killing an unborn child could be liable to imprisonment for up to 14 years.<sup>151</sup> Furthermore, there were no exceptions provided in the legislation. The CEDAW Committee recommended that Samoa review its current law on abortion with a view to removing punitive provisions imposed on women who undergo abortions and provide them with access to high-quality services for the management of complications arising from unsafe abortions.<sup>152</sup>

2.144 Since then the *Crimes Ordinance 1961* was replaced by the *Crimes Act 2013* and the provisions concerning abortion repealed and replaced accordingly. The current law provides that procuring an abortion is illegal, except in the case of a pregnancy of not more than 20 weeks where a medical practitioner is of the opinion that continuing the pregnancy will result in serious danger (not being that danger normally attendant upon childbirth) to the life, or to the physical or mental health, of the woman or girl.<sup>153</sup> 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 a miscarriage, is guilty of an offence and liable to imprisonment for up to 7 years.<sup>154</sup> The penalty was reduced from 14 years under the *Crimes Ordinance 1961* to 7 years under the current law.

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<sup>150</sup> CEDAW Committee, 'Concluding Observations of the Committee on the Elimination of Discrimination against Women: Samoa', 52<sup>nd</sup> sess, UN Doc CEDAW/C/WSM/CO/4-5 (9-27 July 2012) <<http://www2.ohchr.org/english/bodies/cedaw/docs/co/CEDAW-C-WSM-CO-4-5.pdf>> (Accessed 7/12/2015).

<sup>151</sup> *Crimes Ordinance 1961* (Samoa) s 73(1) (A person who caused the death of an unborn child in such a manner that the person would be guilty of murder if the child had become human was liable to up to 14 years imprisonment); *Crimes Ordinance 1961* (Samoa) s 73(2) (A person who caused the death of an unborn child in such a manner that the person would be guilty of manslaughter if the child had become human was liable to up to 5 years imprisonment).

<sup>152</sup> CEDAW Committee, 'Concluding Observations of the Committee on the Elimination of Discrimination against Women: Samoa', 52<sup>nd</sup> sess, UN Doc CEDAW/C/WSM/CO/4-5 (9-27 July 2012) <<http://www2.ohchr.org/english/bodies/cedaw/docs/co/CEDAW-C-WSM-CO-4-5.pdf>> (Accessed 7/12/2015).

<sup>153</sup> *Crimes Act 2013* (Samoa) s 116.

<sup>154</sup> *Ibid* ss 112, 113 and 114.

2.145 As with domestic violence, sexual violence and trafficking, there is little data collection on abortion. Information on the prevalence of illegal abortions in Samoa, or reasons for aborting, is not readily available.

### **Submissions**

2.146 The Commission sought submissions on the following:

*Would further exceptions to abortion be appropriate to meet Samoa's obligations under CEDAW (for example where pregnancy is a result of sexual violence such as rape or incest)?*

Unless otherwise stated the points noted are from public consultations and submissions received.

2.147 An overwhelming majority of those who participated in public consultations maintained that the law should remain as it is and disagreed on expanding the exceptions for abortion. Some of the reasons given were that aborting the baby would be ending a life and equate to murder, expanding the exceptions would lead to more problems, abortion is against Samoan and Christian values, there is a chance for the baby to be brought up in a happy environment and that while sexual offenders must be penalised there is no need to abort the baby.

2.148 The Samoa Nurses Association (**SNA**) also firmly expressed its view that the law should remain unchanged:

*We strongly feel that abortion is not the answer. We fully support the current law in place which prohibits abortion and abortion is a criminal offence noting that the penalty has been reduced from fourteen years to seven years. The reduction of penalty years for abortion should be addressed as Samoa's compliance and consistent enough with the Convention...*

*We are reminded that this was the same issue discussed and was brought forward by the then Chief Executive Officer of the MWCSO in 2008, whereby various comments and contributions were made to maintain abortion as a crime*

2.149 A small number of participants had differing views. A few agreed that if a young girl is the victim of a sexual offence such as incest or rape she should be able to choose to have an abortion. Some emphasised that only very young victims could be the exception (the example some gave was of a girl under the age of 10), not older women (the example that some gave was of a girl 12 years old or above). Others maintained that a doctor's report

confirming that the mother's life is at risk because of the pregnancy should still be required in such circumstances. Some were of the view that the embarrassment for the child and the family should be a consideration especially in cases of incest where the child would likely be stigmatised.

- 2.150 A submission from the NHRI expressed concerns that the current law does not provide for exceptions in cases of rape, incest or for minors, stating that evidence suggests that pregnancy in such instances is more common than official statistics recognise. It also noted that when an unwanted pregnancy occurs, mothers may seek alternatives to bringing the pregnancy to term. It stated:

*The emotional, physical and mental burden often falls solely on the pregnant mother, who does not have many options outside of Samoa Family Health Association (SFHA) and SVSG in receiving support. The CEDAW Committee has warned that such prohibitions lead to women seeking unsafe, illegal abortions. According to SFHA, 36 women sought unsafe abortions for unwanted pregnancies in 2014, although these are only the documented cases, and there are likely many others that go unreported. The CEDAW Committee is also concerned that a woman is liable to imprisonment for up to 7 years for the unlawful procurement of her own miscarriage. It is not fanciful to view suicide as an option that occurs to a pregnant victim of rape or incest in the circumstances they face in Samoa. These policy and legislative settings must be reviewed to take proper account of the risks imposed and which are being borne by vulnerable women and girls who are victims of unlawful sexual acts.*

- 2.151 The NHRI recommended that the Government considered viable medical options for women and girls who fall pregnant as a result of rape and incest, as well as financially support SFHA and SVSG in the provision of comprehensive family counselling services for these cases.

- 2.152 One submitter raised similar concerns, adding that “to make a rape survivor then go on and carry a baby to term, deliver that baby and then try to care for it – is forcing further suffering and victimization on that survivor.” She submitted that exceptions for abortion “should be expanded to included victims of rape and incest” as well as to automatically include girls under the age of 16 years, regardless of whether rape has been proven, because the body of a child cannot safely nurture a baby and irreparable harm can be done to them, both physically and mentally. She also maintained the current law discriminates against women who are poor and who have no access to health care in neighbouring countries like New Zealand, where wealthier women may travel to for an abortion. She emphasised that what is important is that all women are able to choose whether or not to have an abortion.

- 2.153 PPSEAWA supported expanding the exceptions to cases of rape, incest, underage sex and non-consensual sex for abortions under 12 weeks.
- 2.154 MWCSA answered both “yes and no” to the question of whether further exceptions to abortion would be appropriate. In favour of expanding the exceptions, the Ministry noted that after the baby is born the girl would be stigmatised and discriminated by peers and the community because of how the pregnancy came about and the child will be stigmatised and labelled as “*tama o le po*” (child out of wedlock) or “*tama a le laumei*” (child as a result of incest). Against expanding the exceptions, the Ministry stated that abortion does not coincide with Samoa’s traditional and Christian beliefs.
- 2.155 Suggestions were made by members of the public about responding to pregnancies resulting from sexual violence emphasising that victims should receive counselling and support and that the child could be taken care of by another family member or be adopted out (some participants suggested taking the baby to SVSG). The importance of saving both the lives of mother and baby was stressed throughout.
- 2.156 The SNA emphasised the need for national data collection relating to abortion and noted its goal to educate and raise awareness around abortion and reproductive health.

#### **Commission’s views**

- 2.157 The status of abortion as a criminal offence does not in itself amount to non-compliance with CEDAW. In respect of abortion, the focus concerns whether or not the effect of the criminal provision on women is discriminatory and whether such women are able to access appropriate services to manage any complications that may arise from unsafe abortions. Thus relevant to the question of whether all ‘appropriate measures’ have been taken.
- 2.158 The current law allows for an abortion when the woman’s life, physical or mental health are judged to be in serious danger by a medical practitioner, provided the pregnancy is not more than 20 weeks gestation. This is consistent with the obligations under CEDAW.
- 2.159 Data on the prevalence of illegal abortions in Samoa, or reasons for aborting, is not readily available. The collection of data regarding abortion in Samoa is vital for further consideration of this issue. The concern that prohibiting abortion in cases of rape, incest or other unwanted pregnancies may lead some women to seek unsafe, illegal abortions does not on its own warrant expanding the exceptions for abortion.
- 2.160 If a victim of rape or incest becomes pregnant and carrying a pregnancy to term may cause serious harm to her physical or mental health, she may, if assessed by a medical practitioner of being in danger of depression, anxiety and/or suicidal behaviours, have the option of procuring an abortion. This is provided the pregnancy is less than 20 weeks. The

option to do so is extremely important as there are also victims who may opt to continue with the pregnancy even if abortion was a possibility.

- 2.161 The Commission notes however, that if a pregnancy is not known or is hidden past 20 weeks gestation, a woman cannot legally abort an unwanted pregnancy even if it is a result of sexual offending and even if it puts her life, or physical and mental health at risk.
- 2.162 The Commission also considers that concerns that a victim and her child may be stigmatised if the victim continues with the pregnancy is not necessarily solved by an abortion. The issue in this instance is the stigma and those who propagate it. Furthermore, victims may face stigma even without carrying the pregnancy to term, due to being the victim of a “dirty” crime. A response that directly tackles the problem would be to educate the public to show care and compassion for victims of rape or incest and their children, not ridicule or disdain.
- 2.163 Moreover, abortion in such instances does not address the underlying problems that give rise to such violence against women and girls. The problem here is the abhorrent abuse of women and girls, which is not solved through abortion. Rather, what is necessary is ongoing prevention initiatives such as education programmes, community watch schemes and swift and diligent response from police in such cases.
- 2.164 As was strongly expressed by many during consultations, it is also necessary to consider the unborn child in this context, the second victim in every case of rape or incest that results in pregnancy. The reasons for abortion must be weighed against the life of the unborn child, which is ended by the act of abortion. This balancing act is reflected in the current law, which only puts the child’s life secondary to the life and health of the mother when these are judged to be in serious danger by the attending physician.

#### **Recommendations**

34. No legislative amendments are required to the abortion laws. Although abortion is criminalised in Samoa, it is not inconsistent with CEDAW. The law permits abortion if the woman’s life, physical or mental health is at risk up to 20 weeks gestation. Therefore, to effectively implement this legislation, health professionals should be required (through policy and subsequent training) to conduct proper assessments for all pregnant women who are victims of sexual crimes and for young pregnant girls to assess the physical and mental health impacts of giving birth.
35. Proper support systems should be set in place for young pregnant girls and victims of sexual crimes and adequate funding should be made available for this purpose. This should include free services such as counselling and social support groups.

36. Public education and awareness programs on the extreme physical and psychological effects experienced by victims of rape and incest should be established with the overall purpose of creating acceptance and understanding and reducing the stigma surrounding victims of rape and incest.
37. By and large, the focus should be shifted to prevention initiatives such as compulsory sex education in schools, greater proliferation of public awareness programs on the importance of contraception/family planning, the effects of unwanted pregnancies, etc.
38. There should be a concerted effort at improving both men and women's access to effective and free or affordable contraception.
39. Proper data collection systems should be in place to assist in identifying the prevalence of illegal abortions in Samoa, for further consideration of this issue in future.

### **PART 3: POLITICAL AND PUBLIC LIFE**

***CEDAW Articles relevant to this Part include Articles 3, 4, 5, 7,8, 14***

- ***Article 3: to ensure the full development and progress of women in the political, social, economic and cultural fields so as to guarantee enjoyment of human rights and fundamental freedoms***
- ***Article 4: to adopt temporary measures to progress de facto equality until other equality objectives are accomplished***
- ***Article 5: to ensure that stereotyping and cultural practices are eliminated using appropriate measures***
- ***Article 7: to ensure that men and women have equal rights to political participation***
- ***Article 8: to ensure that there is sufficient representation of women at the international level***
- ***Article 14: to ensure that rural women receive the same benefits as men from various important opportunities thus eliminating discrimination***

***See Appendix 1 for full text***

3.1 Article 7 of CEDAW requires States to ensure women and men have equal rights in all areas of political and public life, including the right 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. This obligation extends to many aspects of civil

society, including public boards and local councils, political parties, trade unions, professional or industry associations, women's organisations, community-based organisations and so on.

3.2 When inequality exists, Legislative Compliance Indicators look at whether temporary special measures have been taken to advance equality and women's participation.<sup>155</sup>

#### **A. Local Governance**

3.3 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 (matai)* and is governed according to custom.<sup>156</sup> Those who are not *matai* cannot participate in the Village *Fono*.

3.4 The Samoa Census Report 2011 indicates that out of the total population of Samoa, only 11% of *matai* titles are held by women.<sup>157</sup> Research carried out by the CSS at the NUS found that women comprised only 5.5% of all village-based *matai*.<sup>158</sup>

3.5 In relation to participation by women in village government, research carried out by the CSS at the NUS 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;
- In 36 villages women *matai* are recognised, but are not allowed to attend and participate in the village councils;<sup>159</sup>
- Some women fear that they will not receive a courteous hearing if they wish to speak and may be discouraged from speaking;<sup>160</sup> and
- 30.91% of women *matai* choose not to attend village council meetings as they either do not see it as within their role as a woman to participate or do not feel comfortable attending meetings due to negative male attitudes and the male dominated environment.<sup>161</sup>

3.6 This shows that even though more women may be appointed as *matais*, their participation in local governance is still affected. It should be noted that while a woman's participation in Village *Fono* may be limited by the practice of one village in which she

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<sup>155</sup> See CEDAW Legislative Compliance Indicator 7.3, Appendix 2. See also CEDAW Article 4.

<sup>156</sup> *Village Fono Act 1990* (Samoa) Long title.

<sup>157</sup> Samoa Bureau of Statistics, *Population and Housing Census 2011 Analytical Report* (2011) at 50.

<sup>158</sup> Leasiolagi Malama Meleisea et al, 'Political Representation and Women's Empowerment in Samoa' (2015) vol 1 *Centre for Samoan Studies*, National University of Samoa at pp. 20, 27 and 38.

<sup>159</sup> *Ibid* at 28.

<sup>160</sup> *Ibid*.

<sup>161</sup> *Ibid* at 34.

holds a title, it may be permitted in other villages for which she holds a different title. In any case, the lower level of participation of women in village governance hinders equal participation along with their male counterparts running for national elections, particularly as village recognition and backing is essential for electoral success in a constituency.<sup>162</sup>

- 3.7 It is also significant to note that an amendment to the *Village Fono Act 1990* has recently been tabled in Parliament. The *Village Fono Amendment Bill 2016* proposes to strengthen the role of the *Fono* in determining custom for the village.
- 3.8 Village Women's Committees also play significant roles in village administration, though such committees are not specifically recognised in statute. For example, some Village *Fono* consult with Women's Committees in important decisions before them.
- 3.9 The *Sui o le nu'u (SN)* is established by legislation to represent the village and be responsible for carrying out certain administrative tasks and representing the village to national policy makers.<sup>163</sup> While the legislation does not discriminate in terms of gender, the role is most often filled by a male. Similarly, the *Sui Tama'ita'i o le Nu'u (STN)* is established by legislation to ensure participation of women in a similar role to the *Sui o le nu'u*.<sup>164</sup> Of note is that the role of STN is paid around 50% less than its (usually male) counterpart, which may be indicative of lower value placed on the role.<sup>165</sup>

## B. National Governance

- 3.10 In regards to participation in politics, Samoa's legislation is generally consistent with Article 7. For instance, appointment to government positions is based on merit,<sup>166</sup> women and men have equal voting rights,<sup>167</sup> the requirement that candidates must hold a *matai* title to stand for election to Parliament applies to both men and women,<sup>168</sup> and there are otherwise no legislative barriers to participation in political and public life on the basis of gender. There are also *ad hoc* provisions in various pieces of legislation to ensure there is at least one female representative in Board membership.<sup>169</sup>

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<sup>162</sup> *Ibid.*

<sup>163</sup> *Internal Affairs Act 1995* (Samoa) s 15.

<sup>164</sup> *Ministry of Women Affairs Act 1995* (Samoa) s 16A.

<sup>165</sup> CEDAW Legislative Compliance Working Group, Samoa Law Reform Commission, *Scribed Document: Discussion into Articles 11 – 16* (2014). Their allowance is considered by the Cabinet on the advice of the MWCS.

<sup>166</sup> *Public Service Act 2004* (Samoa) s 18(2)(a).

<sup>167</sup> *Electoral Act 1963* (Samoa) s 19.

<sup>168</sup> *Electoral Act 1963* (Samoa) s 5 and Form 1A in the Schedule.

<sup>169</sup> See for example, *Prisons Parole Board Act 1977* (Samoa) s 4(1); *Samoa Language Commission Act 2014* (Samoa) s 8.



- 3.11 Despite equality under the law, women’s political representation remains low. Samoa was ranked among the lowest in the world (131 out of 139) for women’s political participation and since independence in 1962, women have remained below 10% of Samoa’s parliamentarians.<sup>170</sup> However, the new Parliamentary quota system requiring that 10% of seats be reserved for women was implemented for the first time in the 2016 elections.<sup>171</sup> This appeared to encourage women to run for Parliament as there was a boost in numbers of women who ran to 25. Of this number, 4 were elected and the number of female Parliamentarians increased to 5 due to the quota.<sup>172</sup>
- 3.12 The Executive Branch of Government comprises 13 Cabinet Ministers (including the Prime Minister). This includes 2 female Ministers, namely Honourable Fiame Naomi Mataafa, Minister of Natural Resources and Environment and the first female Deputy Prime Minister, and Honourable Faimalotoa Kika Stowers, Minister of Women, Community and Social Development.
- 3.13 One of the biggest restrictions on women’s participation in the national political sphere is that much fewer women hold a *matai* title. Research carried out by the CSS at the NUS 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.<sup>173</sup> 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 for elections within the constituency of the village they are prohibited from.<sup>174</sup>
- 3.14 In executive and administrative roles, women are employed at an equal or greater rate than men, and the numbers in leadership positions have been steadily growing.<sup>175</sup> In Government, almost half (47%) of the 19 Government agency have female Chief Executive

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<sup>170</sup> NHRI (Written submission 2015).

<sup>171</sup> *Constitution of the Independent State of Samoa 1960* (Samoa) art 44(1B)(b). This may be considered a special temporary measure in an aim to increase representation of women in Parliament. Furthermore, although the enactment of legislation itself may appear concrete, the quota system may be discontinued by way of legislative enactment when its desired results have been achieved.

<sup>172</sup> Telephone interview with the Office of the Electoral Commissioner (Apia, 21 March 2016).

<sup>173</sup> Or do not recognise titles bestowed on women. Leasiolagi Malama Meleisea et al, ‘Political Representation and Women’s Empowerment in Samoa’ (2015) vol 1 *Centre for Samoan Studies*, National University of Samoa at 39 and 45. According to the study, villages that do not permit women to hold *matai* are Malie, Maninoa, Saleaaumua, Lufilufi, Leulumoega, Samamea, 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.

<sup>174</sup> *Ibid* at 41 and 44.

<sup>175</sup> MWCS, *Samoa Country Report 2014 on Progress in Implementing the Pacific Leaders Declaration for Gender Equality* (2014).

Officers (**CEOs**), and comprise 50% of the Assistant Chief Executive Officer level while 33% hold top management level positions at the 28 State Owned Enterprises.<sup>176</sup>

## Submissions

3.15 The Commission in its Discussion Paper sought submissions on the questions relating to potential legislative measures, with points from public consultations set out below.

### *Consultations: Should Village Fono be prohibited by legislation from refusing recognition of women matai, and from refusing women matai to attend and participate in Village Fono meetings?*

3.16 Many of those at public consultations were of the view that villages prohibiting women from holding *matai* titles should review this rule, with many going so far as to say that this should be legislated for. Allowing women to hold *matai* titles was seen as important for women's voices to be heard, particularly as this would facilitate their involvement in the Village *Fono* and national governance. The only strongly dissenting voice on allowing women to hold *matai* titles came from *Alii* and *Faipule* in Asau where women are currently prohibited from holding *matai* titles. The majority of *Alii* and *Faipule* from Asau favoured continuing this ban, despite many generally supporting women running in elections and entering Parliament.

3.17 It was submitted that changing the mindset of communities toward the acceptance of women holding *matai* titles and sitting in the Village *Fono* was regarded as key to increasing women's leadership in the villages. It was also expressed by many that the decision to give women *matai* titles should be made by families, not the village.

3.18 In terms of women's participation in the Village *Fono*, the majority of submissions were in favour of allowing women *matai* to sit and participate in the Village *Fono* and suggested that legislation should require equality for women in this regard. It was considered that women's participation in village governance is vital as they offer a unique perspective and can ensure the decisions by male *matai* are fair and balanced, and considers women's particular needs.

3.19 However, this view was not unanimous. The position of some *Alii* and *Faipule* in Saleapaga was that due to the relationship of respect between brothers and sisters, it is not appropriate to have women sit in the Village *Fono* due to discomfort when discussing certain topics, for example, where *matai* discuss cases of a sexual nature. Furthermore, it was raised that the occasional use of obscene language and inappropriate jokes amongst the *matai* make it inappropriate for women to be present.

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<sup>176</sup> Ministry of Finance, *Statistics*, (2014).

3.20 In Sapapalii, some *Alii* and *Faipule* submitted that the *fa'amatai* system and custom bans have been in place for generations and that the inclusion of women in the Village *Fono* is putting too much emphasis on human rights at the expense of customs and traditions.

3.21 MWCSO did not give a firm view whether Village *Fono* should be prohibited by legislation from refusing recognition of women *matai* and from refusing to allow women *matai* to attend and participate in Village *Fono* meetings on the sole basis of gender. It rather sought to explain the traditional practice and observation of the covenant (*feagaiga*) between the brother and sister as the main reason male *matais* refuse to allow women *matai* to participate in village council meetings. It noted that “there is no legislation banning women *matai* from participating in village council meetings, however Samoan people are determined to still respect this covenant and observe the rules imposed by their forefathers.” It further considered that the Women Matai and Leadership Survey conducted by the MWCSO in 2013 “reveals that women themselves are confident with the system at the moment” as “they see their *matai* brothers as their voice in the village council meetings and they feel that the women’s committees is the place for women to voice their opinions” (*sic*).<sup>177</sup>

3.22 Similarly, NHRI submitted that it would be premature to prohibit the Village *Fono* from refusing recognition of women *matai* solely on the basis of gender or from refusing to allow women *matai* to attend and participate in Village *Fono* meetings. Rather, the cultural context of the *matai* system and its different manifestations across families and villages should be explored further to help inform appropriate special measures that would improve the recognition of women *matai* and women’s leadership in the community generally.<sup>178</sup>

3.23 In lieu of allowing women to sit and participate in the Village *Fono*, *Alii* and *Faipule* from Asau suggested that women can be given the opportunity to form their own committee with allotted meetings with the Village *Fono* to discuss certain village matters.

3.24 Both PPSEAWA and SFA agreed that Village *Fono* should be prohibited by legislation from refusing recognition of women *matai* and from refusing to allow women *matai* to attend and participate in Village *Fono* meetings on the sole basis of gender.<sup>179</sup>

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<sup>177</sup> MWCSO (Written submission 2015).

<sup>178</sup> NHRI (Written submission 2015).

<sup>179</sup> PPSEAWA (Written submission 2015); SFA (Written submission 2015).

**Consultations: What measures can increase women’s participation in national governance?**

- 3.25 With regards to improving women’s representation in national governance, it was submitted that the *Electoral Act 1963* should be amended to allow anyone, whether *matai* or not, to run for elections. This would allow women living in villages with a prohibition on women *matai*, such as Asau, to run for Parliament. Interestingly, some *Alii* and *Faipule* from Asau expressed that although their village imposes a ban on women *matai*, they recognise the importance of women’s roles in Parliament and support the ability of women to run in elections without *matai* titles.
- 3.26 Furthermore, it was suggested that Special Temporary Measures including an increased number of allocated seats for women in Parliament (suggestions ranged from 30-50%) would ensure greater participation for women in national governance.
- 3.27 NHRI submitted the focus should instead be placed on implementing policies that promote and advance women’s roles in the village decision making process. Moreover, education and awareness programs that promote the value of seeking leadership opportunities would prove more effective at empowering women into leadership roles than legislative change.<sup>180</sup>
- 3.28 Other suggestions to increase women’s participation in both village and national governance included imparting the necessary knowledge and skills to women so that they may become *matai* (for example, knowledge of the *fa’a Samoa* and oratory skills); enforcing women’s programs so that women can reach a high level in the village setting and thus more easily be involved in decision making; families offering more support to the women in their families (for example, selecting women *matai* to represent them in the Village *Fono*); women providing more support to one another; and encouraging women *matai* to run for elections.

**Consultations: What legislative measures can assist women accessing the highest level of public service positions? Should equality of representation of genders be a specified criterion in the appointment of all public governance boards?**

- 3.29 Many views raised at public consultations agreed that equality of representation of genders in the appointment of all public governance boards should be required.
- 3.30 To promote gender balance in decision making the NHRI recommended “that the terms of reference for all public governance boards should include a provision requiring the

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<sup>180</sup> NHRI (Written submission 2015).

consideration of gender imbalance in appointments and a minimum number of female board members.”<sup>181</sup>

3.31 To assist women to access the highest level of public service positions, the NHRI recommended appropriate amendments to the *Public Service Act 2004* be made to require the consideration of gender equality in all public service recruitments.”<sup>182</sup>

3.32 MWCSO was of the view that rather than more legislative provisions, what is required is an increase in awareness programs and available professional counselling for women to encourage them to apply for managerial positions.”<sup>183</sup>

***Consultations: Is there any good 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?***

3.33 MWCSO maintained that there is no reason for inequality of pay of the STN, from that of SN because the roles and responsibilities expected of them are the same.<sup>184</sup> In September 2014, MWCSO submitted a proposal to Cabinet to address this pay inequality by proposing equal remuneration for STN and SN to reflect their significant role.<sup>185</sup> However, this proposal was not accepted by Cabinet which instead directed a pay increase of 60% for STN.<sup>186</sup>

3.34 It was also submitted that equal payment was warranted given that both STN and SN are required to attend the same number of meetings per year and both take on significant roles within the village.<sup>187</sup> Other submitters suggested the differentiation contravened s19 of the *Labour and Employment Relations Act 2013*,<sup>188</sup> and that it was discriminatory for the same work not to receive the same pay.<sup>189</sup>

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<sup>181</sup> Ibid at 7.

<sup>182</sup> Ibid at 8.

<sup>183</sup> MWCSO (Written submission 2015).

<sup>184</sup> Ibid.

<sup>185</sup> MWCSO, *Pepa Kapeneta: Talosagaina o le Siitaga o Totogi mo Sui Tamaitai o le Nu’u* (29 September 2014).

<sup>186</sup> Cabinet Secretariat, FK. (15)19 (10 June 2015). There were no written reasons provided, however, the Commission notes that funding constraints may have been the reason for this decision.

<sup>187</sup> MWCSO (Written submission 2015).

<sup>188</sup> SFA (Written submission 2015); NHRI (Written submission 2015).

<sup>189</sup> PPSEAWA (Written submission 2015).

*Consultations: 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 faavae or iugafono that are registered?*

3.35 Many submissions supported the legislative recognition of women’s committees. It was suggested that the inclusion of consultation with the women’s committee would ensure that there was no gender bias in *faiga faavae* and *iugafono* from the Village Fono.<sup>190</sup> It was also submitted that such a requirement should be imposed as a temporary special measure until more gender balance is achieved in the Village Fono.<sup>191</sup>

3.36 Conversely, one submitter considered that while “to an extent this makes sense as necessary for gender equality at the village governance level”, it “also reinforces the idea that the Village Fono is for male *matai* only” and “would further delineate the Village Fono as being a ‘man sphere’”.<sup>192</sup>

**Commission’s views**

3.37 Overall Samoa’s legislation regarding participation in politics and in executive government at the national level is consistent with Article 7 of CEDAW and the associated Legislative Compliance Indicators.

3.38 However the Commission considers that legislation prohibiting restrictions on women *matai* due to their gender in a manner consistent with the Constitution should be introduced. This should have a positive impact on women’s participation in the national political sphere, removing such impediments to women becoming *matais*.

3.39 The Commission also considers that a more systemic approach to participation of women in public governance would be beneficial. For example, legislation requiring gender equity or a minimum number of women on public boards would have positive results, in comparison to the current ad hoc provisions in various pieces of legislation that require at least one female representative in Board membership.<sup>193</sup> This was also supported in consultations.

3.40 In regard to women’s participation in local governance, there are no legislative impediments and Samoa’s legislation is generally consistent with Article 7 in this regard. Nonetheless, there is discrimination and a material inability of women in some villages to

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<sup>190</sup> MWCSO (Written submission 2015).

<sup>191</sup> PPSEAWA (Written submission 2015).

<sup>192</sup> Lani Wendt Young (Written submission 2015).

<sup>193</sup> See for example, *Prisons Parole Board Act 1977* (Samoa), s 4(1); *Samoa Language Commission Act 2014* (Samoa) s 8.

meaningfully participate in local governance as a result of being prohibited or encouraged not to participate in Village *Fono*.

3.41 To address these cultural perceptions which are one of the most significant barriers to participation of women in politics, the Commission considers that non legislative measures may be more appropriate. This should include public awareness, education campaigns, and programmes focussed on enhancing the roles of women and changing mindsets of men and women of women's roles in the village. The Commission considers that legislative interventions in this regard, may be viewed as too intrusive into the affairs of the Village *Fono*.

3.42 Efforts to improve understanding of women's underrepresentation should be accompanied by continued education campaigns targeted at the village level to improve knowledge and understanding of gender equality and particularly campaigns targeting women and girls to empower them and help them find their voices.

3.43 The Commission considers that legal recognition of Women's Committees should be considered under the *Village Fono Act 1990*. This could include ensuring the participation of Women's Committees in significant village decisions or at least requiring them to be consulted by the Village *Fono* particularly in relation to issues pertaining to women. This may reinforce the custom already in practice in many villages, respecting the customary role of women as advisors.<sup>194</sup>

3.44 In relation to the issue raised concerning the vastly different remuneration for the role of the STN, and SN, the Commission suggests that if the two roles are of comparative value, this should be reflected by comparable remuneration.

#### **Recommendations**

40. There should be a legislative prohibition around the restrictions on *matai* titles conferred to women due to their gender.

41. In villages where women are prohibited from participating in village *fono*, alternatives to encourage their participation should be explored including:

- The establishment of a separate Women's Committee with allotted meetings with the Village *Fono* to discuss certain village matters;
- Allowing female representatives who will sit on certain village *fono* meetings

<sup>194</sup> Leasiolagi Malama Meleisea et al, 'Political Representation and Women's Empowerment in Samoa' (2015) vol 1 *Centre for Samoan Studies*, National University of Samoa. This was a recommendation following the study.

where issues pertaining to women are discussed.

42. Women's Committees should be given legal recognition under the *Village Fono Act* to ensure their participation in significant village decisions or issues particularly relating to women.
43. Cabinet to reconsider MWCSO proposal for remuneration for *Sui Tama'ita'i o le Nuu* to be comparable to *Sui o le Nuu* to reflect and recognize their equally significant role.
44. Legislation establishing public boards should include a provision to ensure gender equity or at least a stipulated number of female members.
45. To address the underrepresentation of women in leadership positions, there should be a concerted effort on public awareness, education campaigns and programs focussed on leadership empowerment and encouraging participation by women in village governance. These programs should also educate and emphasize the value attached to the contribution of women to village and national decision making.
46. Adequate funding, resourcing and capacity building should be made available to carry out these public awareness programs.

### C. International representation

***CEDAW Articles relevant to this Part include Article 8***

- ***ARTICLE 8: to ensure the presence of women at all levels and in all areas of international affairs***

***See Appendix 1 for full text***

3.45 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.<sup>195</sup> It secures women's rights to represent their Government at the international level and to participate in the work of international organisations.

3.46 Decisions about how Samoa is represented internationally are made by way of political appointments by Cabinet in the case of Heads of Missions and Consulate Generals. Other diplomatic staff such as Consular and First Secretary of the mission also require Cabinet endorsement. Of Samoa's 6 missions, 2 Head of Mission posts (Ambassadors or High

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<sup>195</sup> CEDAW Committee, General Recommendation (CEDAW) GR No. 23: *Article 8 International Level*, 16th session, (1997).



Commissioners) are occupied by females. Of the 13 officers currently posted overseas at the various missions, 8 are female and 5 are male.<sup>196</sup>

3.47 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 delegations.

### Submissions

3.48 In its Discussion Paper the Commission sought submissions on the following:

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

3.49 The NHRI submitted that whilst it could 'see no legislative barriers preventing gender equality in relation to international appointments,' it noted that the majority of high level diplomatic positions were held by men. Furthermore, diplomatic appointments made by Cabinet should mandate the consideration of gender balance as a criteria and promote efforts to increase gender equality in diplomatic appointments.<sup>197</sup> Some submitters suggested that international appointments should be 50/50.<sup>198</sup>

### Commission's views

3.50 While Samoa's legislation appears consistent with Article 8, 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 would be appropriate to address low representation by women.<sup>199</sup> The Commission considers that it is important to gain a clear understanding of any barriers that prevent women from filling these positions, in order to assess how best to address or rectify this under-representation (for example policies around quotas or a mandatory consideration of gender balance in appointment procedures).

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<sup>196</sup> Information from the Ministry of Foreign Affairs and Trade (MFAT), *List of Samoa Representatives Overseas* (2015).

<sup>197</sup> NHRI (Written submission 2015).

<sup>198</sup> Submissions from public consultations.

<sup>199</sup> See CEDAW Committee, 'Concluding Observations of the Committee on the Elimination of Discrimination against Women: Samoa', 52<sup>nd</sup> sess, UN Doc CEDAW/C/WSM/CO/4-5 (9-27 July 2012) <<http://www2.ohchr.org/english/bodies/cedaw/docs/co/CEDAW-C-WSM-CO-4-5.pdf>> (Accessed 7/12/2015) at [27(a)] (Samoa has been urged to do so by the Committee); Vedna Jivan and Christine Forster, 'Translating CEDAW Into Law: CEDAW Legislative Compliance In Nine Pacific Island Countries' (May 2007) UNDP Pacific Centre and UNIFEM Pacific Regional Office, Suva Fiji at 302; See also CEDAW Article 4 for the use of temporary special measures.

3.51 The Commission notes that it appears common for head of missions to have been former parliamentarians or have held senior positions within Government. The Commission therefore considers that an increase in female Government heads and other senior positions in Government may indirectly result in an increase in the number of women representing their Government at the international level. Furthermore, non-legislative measures such as policies on gender balance may suffice in increasing gender equality in the representation of the Government internationally.

#### **Recommendations**

47. Cabinet should mandate the consideration of female representation in high level diplomatic appointments.

#### **D. Supporting bodies (MWCSO, the Advisory Committee, Village Women's Committees and the Sui a Tama'ita'i o le Nu'u)**

***CEDAW Articles relevant to this Part include Article 3 read in conjunction with Article 2***

- ***Article 3: to actively promote the advancement of women in all fields, and guarantee the enjoyment of their human rights***
- ***Article 2: to uphold principles of CEDAW and a legal framework to protect against discrimination***

***See Appendix 1 for full text***

3.52 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.

3.53 In order to ensure that these goals are effectively achieved, the CEDAW Committee urges State 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.<sup>200</sup>In Samoa such bodies include the MWCSO, the Women's Advisory Committee, and the STN.

3.54 The functions of MWCSO includes promoting the work of women and women's committees (including relating to primary health care, sanitation, child care, gardening),

<sup>200</sup> CEDAW Committee, *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](http://www.ohchr.org/Documents/HRBodies/CEDAW/NHRI_en.pdf)> (Accessed 23/06/2015).

and providing training for women in their areas of work and in home economics. The Ministry also advises the Government on women's affairs and provides feedback back to women's groups, as well as promotes the interest of women's committees and coordinates programmes and projects for women.<sup>201</sup>

3.55 The MWCSO has in place a *National Policy for Women of Samoa*<sup>202</sup> continuously highlighting and addressing obligations under CEDAW. Over the years, it 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.

3.56 The *Ministry of Women's Affairs Act 1990* also establishes a Women's Advisory Committee within MWCSO.<sup>203</sup> This Committee consists of the Minister as Chairperson, the CEO, 15 women appointed from Upolu, Manono and Apolima, and 15 women appointed from Savaii.<sup>204</sup> This Advisory Committee is responsible for overseeing the full development and advancement of women in Samoa in the political, social, economic and cultural fields.<sup>205</sup>

3.57 A 'STN' for each traditional village of Samoa is also established under the Act.<sup>206</sup> The STN works collaboratively with Women's Committees in her village to ensure the needs of women in her village are raised and heard by Government.<sup>207</sup>

3.58 To ensure human rights issues were properly addressed, the NHRI was established within the Office of the Ombudsman under the *Ombudsman (Komesina o Sulufaiga) Act 2013*.<sup>208</sup> The NHRI was launched at the end of 2013 with functions that 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. 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.<sup>209</sup> The NHRI is specifically mandated to include consideration of

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<sup>201</sup> *Ministry of Women's Affairs Act 1990* (Samoa) s 6.

<sup>202</sup> MWCSO, *National Policy for Women of Samoa 2010 – 2015*, (2010) Apia, Samoa.

<sup>203</sup> *Ministry of Women's Affairs Act 1990* (Samoa) s 11.

<sup>204</sup> *Ibid* s 12.

<sup>205</sup> *Ibid* s 14.

<sup>206</sup> Samoa Law Reform Commission, *Convention on the Elimination of Discrimination Against Women Discussion Paper*, Discussion Paper 03 (2015). (*Sui Tama'ita'i o le Nu'u* is discussed further under CEDAW Article 14).

<sup>207</sup> *Ministry of Women's Affairs Act 1990* (Samoa) s 16B.

<sup>208</sup> *Ombudsman (Komesina o Sulufaiga) Act 2013* (Samoa).

<sup>209</sup> Samoa Law and Justice Sector, *Establishment of the National Human Rights Institution (NHRI) at the Office of the Ombudsman* (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](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).

CEDAW,<sup>210</sup> and its establishment is a significant step that directly addressed a particular recommendation by the CEDAW Committee in 2012.<sup>211</sup>

## Submissions

3.59 In its Discussion Paper the Commission asked the following:

*Are MWCSO, the Advisory Committee, Village Women's Committees and STN effective and sufficient agencies for recognising and promoting women's issues in Samoa?*

### ***Consultations: Are 'women's issues' approached too narrowly by government and government agencies?***

3.60 The general consensus was that Samoa has a well-established framework of institutions and bodies recognizing and promoting women's issues. Furthermore, although MWCSO, the Advisory Committee, Village Women's Committees and STN can be the lead agencies in doing so, the promotion of women's issues is everyone's responsibility.<sup>212</sup> There is also a need to recognize the contribution of non-governmental organisations such as SVSG, the SFHA and Women in Business Development Inc in promoting women's issues in Samoa.

3.61 In terms of whether women's issues are approached too narrowly in Samoa, MWCSO did not agree. This is due to its multi-sectoral approach in dealing with women's issues in Samoa where key community representatives from around the country are invited for participation. It was mentioned that the only challenge to this approach is filtering the information from these key representatives to the rest of the community for awareness and understanding.<sup>213</sup>

3.62 The majority of submissions were of the view that women's issues are approached too narrowly by government and government agencies. NHRI submitted that MWCSO's functions are significantly focussed on the traditional roles of women in society and recommended that MWCSO's functions be broadened to include all objectives of CEDAW, particularly to promote roles for women beyond traditional social norms. It noted that such functions could include encouraging and promoting women's leadership and participation at a village, national level and in all aspects of the public sphere; reducing gender stereotyping and promoting substantive equality between men and women; and

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<sup>210</sup> See *Ombudsman (Komesina o Sulufaiga) Act 2013* (Samoa) s 2 and Schedule 1.

<sup>211</sup> CEDAW Committee, 'Concluding Observations of the Committee on the Elimination of Discrimination against Women: Samoa', 52<sup>nd</sup> sess, UN Doc CEDAW/C/WSM/CO/4-5 (9-27 July 2012) <<http://www2.ohchr.org/english/bodies/cedaw/docs/co/CEDAW-C-WSM-CO-4-5.pdf>> (Accessed 7/12/2015).

<sup>212</sup> MWCSO (Written submission 2015).

<sup>213</sup> *Ibid* at 2.

to educating and empowering women and girls about their rights under CEDAW and advising the Government on matters related to discrimination against women.<sup>214</sup>

3.63 This view was supported by SFA which submitted that women's issues are approached narrowly due to the stereotypical view that women perform only caregiver and domestic roles.<sup>215</sup>

### Commission's views

3.64 The NHRI combined with the already-established MWCSO and other supporting bodies, shows that Samoa has a broad enabling legislative framework that is fully compliant with its obligations under CEDAW. There is scope however for the specific statutory functions of the MWCSO to be brought further in line with CEDAW, as currently these arguably encourage and promote gender stereotyping by emphasising particular roles of women as including cooking, dressmaking, sewing and training in home economics.<sup>216</sup> This may be inconsistent with the obligation in Article 5 of CEDAW to take appropriate measures to reduce gender role stereotyping. More focus on leadership and public participation may further support equality of participation in political and public life pursuant to Article 7 of CEDAW, rather than the current focus on home-based activities.

3.65 The Commission considers that MWCSO, the Advisory Committee, Village Women's Committees and STN in conjunction with the NHRI are the appropriate leading bodies for recognising and promoting women's issues in Samoa. However, in order for such bodies to be truly effective, it is important that they are supported by wider government and civil society.

3.66 Articles 2 and 3 of CEDAW promote the advancement of women in all fields, and guarantee the enjoyment of their human rights. The extensive list of constitutionally protected rights shows a broad compliance with Samoa in this regard.

3.67 There may also be merit in broadening MWCSO's functions under the *Ministry of Women's Affairs Act 1990* to include the promotion of roles for women beyond traditional social norms. Such additional functions could include the promotion of women's leadership at the village and national level and to increase the participation of women in all aspects of the public sphere.

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<sup>214</sup> NHRI (Written submission 2015).

<sup>215</sup> SFA (Written submission 2015).

<sup>216</sup> *Ministry of Women Affairs Act 1990* (Samoa) s 6(c).

## Recommendations

48. The Government needs to continue to work collaboratively with non-governmental organisations providing adequate financial and material assistance to assist with their work in recognizing and promoting of women's issues in Samoa.
49. The MWCSO's functions under the *Ministry of Women's Affairs Act 1990* should be broadened to capture CEDAW objectives, particularly in promoting roles for women beyond traditional social norms, including but not limited to:
- encouraging and promoting women's leadership at a village and national level and participation in all aspects of the public sphere;
  - reduce gender stereotyping and encourage and promote substantive equality between men and women;
  - educate and empower women and girls about their rights under CEDAW to increase their participation in the public sphere and to seek to enforce and promote their rights and have their voices heard;
  - advise the Government on matters related to discrimination against women.

## PART 4: OTHER ISSUES

### A. Legal Framework

***CEDAW Articles relevant to this Part include Article 1 and 2***

- ***Article 1: definition of 'discrimination against women'***
- ***Article 2: to uphold principles of CEDAW and a legal framework to protect against discrimination***

***See Appendix 1 for full text***

4.1 Articles 1 and 2 emphasize the need to ensure a legal framework to provide protection against discrimination against women and embody principles of equality of men and women. To meet obligations under these Articles, Governments must ensure that legislative (and other) measures embody these principles of equality and prohibit discrimination, and also provide appropriate sanctions; as well as modify or abolish any laws that discriminate against women.

- 4.2 Legislative Compliance Indicators for these articles include provisions that guarantee rights for women and especially rights of equality and non-discrimination.<sup>217</sup> This includes substantive provisions, as well as mechanisms for enforcement and remedy against public and private actors.<sup>218</sup> Comprehensive provisions surrounding domestic and gender-based violence are also identified as key Legislative Compliance Indicators with these articles (discussed further under Part 2 of the Report).<sup>219</sup>
- 4.3 Rights of equality and freedom from discrimination are expressly provided under Article 15 of the *Constitution of the Independent State of Samoa 1960 (Constitution)* which is the supreme law of Samoa. Article 15 provides for freedom from discriminatory legislation and even clarifies that nothing in the Article prevents making laws for the protection or advancement of women.

**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 religion, political or other opinion, social origin, place of birth, family status, or any of them.*

**(3)** *Nothing in this Article shall:*

...

*(b) prevent the making of any provision for the protection or advancement of women or children or of any socially or educationally retarded class of persons.*

- 4.4 The Ombudsman, established under the *Ombudsman (Komesina o Sulufaiga) Act 2013*, has a range of human rights functions including promoting public awareness of human rights and efforts to combat all forms of discrimination through the provision of information and education.<sup>220</sup> A person subject to a discriminatory administrative decision by a Ministry or public body may have recourse to the Ombudsman, who may recommend reconsideration, cancellation or rectification of the decision.<sup>221</sup> Widespread, systemic, or entrenched situations or practices that violate human rights including the right to freedom from discrimination can be investigated by the Ombudsman, through the NHRI.<sup>222</sup>

<sup>217</sup> See CEDAW Legislative Compliance Indicators 2.1-2.9, Appendix 2.

<sup>218</sup> See CEDAW Legislative Compliance Indicators 2.7-2.9, Appendix 2.

<sup>219</sup> See CEDAW Legislative Compliance Indicators 2.10-2.22, Appendix 2.

<sup>220</sup> *Ombudsman (Komesina o Sulufaiga) Act 2013* (Samoa) s 33(a).

<sup>221</sup> *Ibid*, ss 18 and 28; (The Ombudsman's Office also has particular functions with regard to monitoring CEDAW compliance, discussed under Article 3).

<sup>222</sup> *Ombudsman (Komesina o Sulufaiga) Act 2013* (Samoa) s 34.

4.5 The Constitution under Article 4 also provides 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.<sup>223</sup>

4.6 Despite such rights guaranteed under the Constitution, and 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, the CEDAW Committee raised concerns. The CEDAW Committee indicated that the Convention had not been fully domesticated as part of Samoa's law, and that Samoa had yet to adopt and incorporate into the Samoan Constitution or other legislation a definition of discrimination in line with Article 1 of CEDAW.<sup>224</sup> It recommended this be done.<sup>225</sup>

## Submissions

4.7 In its Discussion Paper the Commission sought submissions on the following:

- *Is there a need for greater protection against discrimination against women by private bodies, enforceable through the courts or the Ombudsman?*
- *Are there any implications of incorporating direct reference to the CEDAW definition of discrimination against women?*

4.8 In relation to greater protection against discrimination against women by private bodies NHRI considered that there would be value in considering appropriate legislative protections to prevent discrimination against women by private bodies. It suggested that this could be through constitutional amendment or consideration of broader anti-discrimination legislation. It also proposed investigating the establishment of an administrative discrimination reporting mechanism, either within MWCSO or through the expansion of the mandate of NHRI.

4.9 In relation to the CEDAW Committee's recommendation for a definition of discrimination in Samoa's legislation in line with Article 1 of the Convention, some submitters indicated that incorporating direct reference to the CEDAW definition of discrimination against women is unnecessary particularly given the express inclusion in the Constitution which is the supreme law of Samoa.

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<sup>223</sup> *Constitution of the Independent State of Samoa 1960* (Samoa) art 4.

<sup>224</sup> CEDAW Committee, 'Concluding Observations of the Committee on the Elimination of Discrimination against Women: Samoa', 52<sup>nd</sup> sess, UN Doc CEDAW/C/WSM/CO/4-5 (9-27 July 2012)

<<http://www2.ohchr.org/english/bodies/cedaw/docs/co/CEDAW-C-WSM-CO-4-5.pdf>> (Accessed 7/12/2015) at [12-13].

<sup>225</sup> *Ibid* at [13(b)].



4.10 Other submitters expressed that to do so may not be appropriate in the Samoan context.<sup>226</sup> In particular, NHRI considered that it could conflict with the traditional practices around women being given *matai* status, their ability to participate in village councils, as well as some of the traditional roles and rankings allocated to women in Samoan society (discussed in Part 3 of the Report).<sup>227</sup>

### Commission's views

4.11 Overall, Samoa's legislation appears consistent with the CEDAW requirements for a legal framework to provide protection against discrimination against women and embody principles of equality of men and women. Freedom from discrimination is a fundamental right expressly stated in Article 15 of the Constitution of Samoa. As the supreme law, all legislation in Samoa is required to be consistent with the Constitution, protecting against direct and indirect discrimination, and enforceable through the courts.

4.12 The Commission respectfully notes the CEDAW Committee's recommendation for a definition of discrimination in Samoa's legislation in line with Article 1 of the Convention, however considers that the inclusion of this fundamental right to freedom from discrimination in the Constitution ensures protection against discrimination against women as well as children and other socially disadvantaged classes of persons – all equally deserving and needing such protection.

4.13 Furthermore the Commission is of the view that the current protection against discrimination under the Constitution enables Samoa's cultural and social framework to be taken into account and equality of women in Samoa implemented in a way that is appropriate to the context of Samoa. Discussions under **Part 4(B)** on gender role stereotyping is relevant to this issue.

4.14 The Commission considers however that there is a need for legislation in place to provide greater protection in relation to any discrimination by private bodies against women. Currently there is no clear ability for individuals to enforce their rights against private bodies except in limited circumstances such as employment (discussed under **Part 2(D)** and **Part 4(D)**). Furthermore, violations of the right to freedom from discrimination can only be investigated by the Ombudsman where such situations or practices are widespread, systemic or entrenched.

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<sup>226</sup> PPSEAWA (Written submission 2015); NHRI (Written submission 2015).

<sup>227</sup> NHRI (Written submission 2015).

**Recommendations:**

50. There is a need for legislative measures to provide greater protection against any discrimination by private bodies against women.

**B. Gender Role stereotyping**

***CEDAW Articles relevant to this Part include Article 5 and 2***

- ***Article 5: to take appropriate measures to modify social and cultural patterns of conduct based on the inferiority or superiority of either sexes or stereotyping roles for men and women***
- ***Article 2: to uphold principles of CEDAW and a legal framework to protect against discrimination***

***See Appendix 1 for full text***

4.15 Article 5 of CEDAW requires States to take appropriate measures to modify social and cultural patterns of conduct based on the inferiority or superiority of either sexes or stereotyping roles for men and women. The Legislative Compliance Measures suggest legislation that gives precedence to the principle of equality if in conflict with customary practices.<sup>228</sup>

4.16 As previously discussed, Article 15 of the Constitution codifies the right to equality and freedom from discrimination. Article 15(4) states further:

***(4) Nothing in this Article shall affect the operation of any existing law . . . 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.***

4.17 Under Article 111, 'existing laws' is defined to include any custom and usage which has acquired the force of law in Samoa, until repealed. Furthermore, the Constitution refers frequently to Samoan custom and usage, including that *matai* titles and customary land are held in accordance with custom and usage.<sup>229</sup>

<sup>228</sup> CEDAW Legislative Compliance Indicators 5.1 and 2.3.

<sup>229</sup> *Constitution of the Independent State of Samoa 1960* (Samoa) art 100 and 101.

## Submissions

4.18 In its Discussion Paper the Commission sought submissions on the following:

*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?*

4.19 It was submitted by NHRI that the inequality between men and women in Samoa is entrenched within the traditional village culture as the *fa'a Samoa* requires a strict adherence to gender roles. For women, these roles tend to be limited to domestic duties with a woman's primary role and responsibility being that of a wife and child bearer, and consequently, women are often excluded from decision-making processes at the village level.<sup>230</sup> Furthermore, it was submitted that one of the causes of the low level of female political participation in Samoa, is due in part to gender role stereotyping.<sup>231</sup>

4.20 NHRI's submission highlighted that women play three distinct roles in the village which determines their status. The *auaaluma* which include the unmarried, divorced and widowed daughters of the village is the highest status a woman can hold and is equivalent to the status of a titled man. The next category is the *faletua* and *tausi*, the wives of the matai, which is the highest status for married women within the village. The third and lowest status is the *ava a taulelea* or the wives of the untitled men. Traditionally, a woman who marries and moves to her husband's family, a *nofotane* has much less status than a woman who stays with her family after marriage. It was raised in NHRI's submission that *nofotane* women often suffered abuse and suffering in her husband's family. The plight of *nofotane* women was also raised by a few submitters in public consultations.

4.21 In its submission, SVSG raised that traditionally a *nofotane* cannot sit on a village council in her husband's family as she has no hereditary link to a chiefly title. In contrast, a man who marries into his wife's family may become a chief, despite having no hereditary or familial links to the title.

## Commission's views

4.22 Under Article 15(4) of the Constitution, the right to equality and freedom from discrimination is somewhat limited insofar as the right does not affect any existing laws in place before the Constitution was enacted.<sup>232</sup> Because 'existing laws' include customs and usage that have the force of law, this means that if there were discriminatory customs and

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<sup>230</sup> NRHI (Written submission 2015).

<sup>231</sup> Ibid. See further discussion of women's political representation in Part 3 of the Report.

<sup>232</sup> *Constitution of the Independent State of Samoa 1960* (Samoa) art 15(4).

usage<sup>233</sup> in place before the Constitution was enacted, then technically they may remain in place. Having said this, the Constitution does remedy this by requiring the State to progressively remove any discriminatory laws.<sup>234</sup> The Commission considers that this provides an appropriate balance in this context, by progressively removing discriminatory practices whilst respecting Samoan custom.

4.23 An integral part of *fa'a Samoa* is the allocation of distinct roles to men and women. At face value, this may appear to be a form of gender stereotyping. However, it is important to note that this part of the Samoan culture is not necessarily rooted in a view of superiority or inferiority of either men or women. Rather, these roles are part of a broader context of society where all community members have a distinct role determined by their family, age, and gender and title status. The roles allocated to different members of the village form an essential part of the Samoan identity and belonging. Thus, eliminating the differences in gender roles may not be appropriate in Samoa's context.

4.24 However, these distinct gender roles may have discriminatory flow on effects for women in their social, political and public life. In particular, the role of women at the village level may be a direct cause of the lack of female representation in national parliament.<sup>235</sup> It may also be argued that the traditional role of women in Samoa is also the root of some of the discriminatory practices in some villages which prohibit women from holding *matai* titles or attending village *fono* meetings.<sup>236</sup> Furthermore, the CEDAW Committee has highlighted how traditional attitudes toward the roles of women can contribute to the perpetuation of violence against women.<sup>237</sup>

4.25 In relation to conflicts between customary laws (collective rights) and contemporary laws (individual human rights) in Samoa, a Court's decision will in essence become a legal decision on Samoan custom, as such, furthering the process of individualisation of the *fa'a Samoa* (i.e. moving towards individual human rights).<sup>238</sup> The Commission considers that the progressive removal of existing laws, as directed in the Constitution, may therefore be occurring in Court decisions relating to conflicts between customary and contemporary laws.

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<sup>233</sup> The Constitution specifies that existing laws include customs and usage *that have the force of law* (emphasis added).

<sup>234</sup> *Constitution of the Independent State of Samoa 1960* (Samoa) art 15(4).

<sup>235</sup> Leasiolagi Malama Meleisea et al, 'Political Representation and Women's Empowerment in Samoa' (2015) 1 *Centre for Samoan Studies*, National University of Samoa.; See further discussion of women's political representation in Part 3 of the Report.

<sup>236</sup> *Ibid.*

<sup>237</sup> See CEDAW Committee, General Recommendations (CEDAW) *GR No. 19: Violence Against Women* (1992) <<http://www.un.org/womenwatch/daw/cedaw/recommendations/recomm.htm>>.

<sup>238</sup> Hon. Chief Justice Patu Tiavaasue Falefatu Maka Sapolu, 'General Address' (Speech delivered at the Australasian Law Reform Agencies Conference, 2014).

4.26 Furthermore, in relation to gender stereotyping, the Commission notes statutory functions of the MWCS D which is established to promote women’s issues under the *Ministry of Women’s Affairs Act 1990* and which is the key Ministry with responsibility for the implementation and further realisation of CEDAW. The Commission considers that the functions of MWCS D to encourage and promote the work of women and women’s committees in relation to primary health care, village and district sanitation, child care, handicrafts, and domestic and community gardens, including gardens for the growing of vegetables; and training, promoting and assisting women with their home economics including cooking, nutritional diet, dressmaking and sewing and matters of a like nature, appears to encourage and promote gender stereotyping by emphasising these particular types of roles as more suitable for women.<sup>239</sup>

### **Recommendations**

51. The statutory functions of MWCS D should be amended so that it does not encourage and promote gender stereotyping and should be more expansive, for example encourage leadership in women particularly in villages and national governance.
52. The Government should continue to direct its policy towards progressively removing discriminatory legislation when appropriate and with consideration of Samoan custom (in accordance with Article 15(4) of the Constitution).

### **C. Education**

#### ***CEDAW Articles relevant to this Part include Article 10***

- ***Article 10: to ensure that there are equal opportunities in education for boys and girls***
- ***See Appendix 1 for full text***

4.27 Article 10 of CEDAW requires States to take appropriate measures to ensure that there are equal opportunities in education for boys and girls, for example equal access to education, with the same facilities and curriculum opportunities, including access to financial support for education. The Legislative Compliance Indicators focus on measures to ensure this equal access.<sup>240</sup> An old Compliance Indicator suggested a legislative prohibition on

<sup>239</sup> *Women’s Affairs Act 1990* (Samoa) s6(c).

<sup>240</sup> See CEDAW Legislative Compliance Indicators 10.1-10.4, Appendix 2. CEDAW Legislative 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).

expulsion from school as a result of pregnancy because of the discriminatory impacts such expulsion can have on girls' education.<sup>241</sup>

4.28 Education in Samoa is compulsory for both boys and girls aged 5-14 under the *Education Act 2009*.<sup>242</sup> School attendance is also required to be monitored, and withdrawals and unexplained absences communicated to the relevant authorities.<sup>243</sup> Despite this, the Commission is advised that monitoring is not properly carried out and often students are withdrawn from school without adequate reasons from the carer to relevant authorities.

4.29 Furthermore, the Commission is informed that decisions to expel students, including pregnant students, are sometimes made by principals without going through processes required by legislation.<sup>244</sup> 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).<sup>245</sup>

4.30 All schools are required to uphold the *National Curriculum Policy* which includes minimum standards of the curriculum set by the Minister responsible for the MESC.<sup>246</sup> The policy imposes the same standards and content for boys and girls, and includes "developing an informed understanding of the issues associated with gender" as an 'essential skill' to be developed in schools.<sup>247</sup> The policy also recognises that boys and girls may respond differently to different teaching styles and that a range of teaching styles should be practiced to ensure effective learning for all.<sup>248</sup>

4.31 The law does not prohibit the continuation of education of pregnant students, or returning to school after child birth, although in the past it may have resulted in expulsion or dropping out from high school.<sup>249</sup> The Commission is advised that there is in place a *Student*

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<sup>241</sup> See CEDAW Legislative Compliance Indicator 10.6 and 'Old Compliance Indicator' 10.6; Vedna Jivan and Christine Forster, 'Translating CEDAW Into Law: CEDAW Legislative Compliance In Nine Pacific Island Countries' (May 2007) UNDP Pacific Centre and UNIFEM Pacific Regional Office, Suva Fiji.

<sup>242</sup> *Education Act 2009* (Samoa) s 406.

<sup>243</sup> *Ibid* ss 11-15. This includes the Chief Executive Officer of MESC, the *Sui o le Nu'u*, or the person in charge of the school (if private).

<sup>244</sup> CEDAW Legislative Compliance Working Group, Samoa Law Reform Commission, *Scribed Document: Discussion into Articles 11 – 16* (2014).

<sup>245</sup> *Education Act 2009* (Samoa) s 57.

<sup>246</sup> *Ibid* s 58.

<sup>247</sup> MESC, *National Curriculum Policy Framework* (Jan 2006) [4.2.3] and [4.2.2].

<sup>248</sup> *Ibid* at [4.5].

<sup>249</sup> Telephone interview with Malaea Lauano, Principal, Leifiifi College (Apia, 2014).

*Pregnancy in Education Policy* to encourage and allow pregnant teens and teenage mothers to continue with their education.<sup>250</sup>

4.32 Statistics indicate a very close percentage of female students to male students. For example in 2014, 48% of total students enrolled in primary schools were female, and 53% were female in secondary schools.<sup>251</sup> Similar numbers are reflected in statistics from 2008.<sup>252</sup> In relation to government scholarships for tertiary education (which are all largely based on merit), almost 60% of have been awarded to women over the last 5 years.<sup>253</sup>

## Submissions

4.33 In its Discussion Paper the Commission sought submissions on the following:

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

4.34 The issue that came through strongly from submitters related to the expulsion of girls and their preventions from attending school due to pregnancy. According to MWCS D many of the expulsions are made by school principals without proper reporting to MESC and the parents and students are often unaware that pregnant girls may still attend school during their pregnancy, or following childbirth.<sup>254</sup> Parents sometimes decide to keep their pregnant daughters at home to avoid stigma from peers and the community and are unaware that their daughter can continue her education after having the baby.<sup>255</sup>

4.35 NHRI maintained that the denial of education for pregnant girls is a form of gender discrimination as boys fathering a child appeared not to face the same pressure to drop out of school as a result of a pregnancy. It stressed that there is a need to foster a culture of acceptance of pregnant students amongst teachers and students, and to encourage pregnant girls to remain in school, or provide alternative options for them to continue their schooling

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<sup>250</sup> MWCS D informs that the policy will be integrated into the MESC's National Violence Free policy for school. See also Division for Women, MWCS D, *Discussion in Policy Advice on Teen Pregnancy and Education* (2014).

<sup>251</sup> MESC, *Education Statistical Digest* (2014) Part 1, 3.

<sup>252</sup> *Ibid.* (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 the incidence of dropping out (disaggregated by gender) and the reasons for doing so.

<sup>253</sup> Out of a total of 538 scholarships, 316 went to women. Information from the MFAT, *Scholarships Statistics 2011 – 2015* (2015).

<sup>254</sup> MWCS D (Written submission 2015).

<sup>255</sup> *Ibid* at 5.

while pregnant as well as after childbirth. At the very least, NHRI considered that there should be express legislative requirements preventing discrimination towards pregnant students.<sup>256</sup>

4.36 MWCSO suggested specifically amending section 57 of the *Education Act 2009* which sets out the circumstances in which a principal may suspend or expel a student, so that expulsion due to pregnancy was expressly prohibited.<sup>257</sup>

4.37 NHRI recommended that MESC take steps to prevent initial dropouts by working towards eliminating all negative social and cultural attitudes towards teenage pregnancy within schools and providing counselling to pregnant students to encourage them to re-enter and finish their education.<sup>258</sup> NHRI further recommended that MESC ensure better enforcement of the reporting and prevention provisions under the *Education Act 2009*.

### **Commission's views**

4.38 The Commission considers that Samoa's legislative framework is consistent with CEDAW requirements relating to equal access to education. Whilst it may be necessary to put in place special measures including legislation to ensure *de facto* equality where gender neutral provisions are not achieving equality in educational opportunities – for example specifically addressing factors that may lead to girls dropping out of education (including pregnancy), the Commission considers that the policy developed by MESC may if implemented effectively, achieve on its own the aims of the Article. Specific legislative prohibition on expulsion of pregnant teens is not required under Article 15 of CEDAW, nor included as a Legislative Compliance Indicator. However, express inclusion in legislation would be a positive reinforcement of Samoa's commitment ensuring equality in girls' access to education and educational opportunities.

4.39 The Commission considers that non-legislative measures are extremely important in achieving this goal. This includes continued effective collaboration between key Government agencies such as MESC and MWCSO, in working towards preventing initial dropouts by encouraging such students and their parents to continue their education during pregnancy as well as after childbirth, for example through counselling. Practical options to support this should be included in the policy paper being developed.

4.40 Student attendance and dropout rates (due to pregnancy and other reasons) need to be monitored, with improved enforcement by MESC of the reporting and prevention provisions under the *Education Act 2009*.

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<sup>256</sup> NHRI (Written submission 2015).

<sup>257</sup> MWCSO (Written submission 2015).

<sup>258</sup> NHRI (Written submission 2015).



## Recommendations

53. Key Government agencies (such as MESC and MWCSO) should work towards changing negative social and cultural attitudes towards pregnant students in schools and encouraging such students and their parents to continue their education during pregnancy as well as after childbirth, as many parents and students are unaware that they may still attend school during their pregnancy, or following childbirth. Practical options to support this should be included in the policy paper being developed.

54. Student attendance and dropout rates (due to pregnancy and other reasons) need to be monitored, with improved enforcement by MESC of the reporting and prevention provisions under legislation.

## D. Employment

### ***CEDAW Articles relevant to this Part include Article 11***

- ***to ensure women have the same rights as men to work, with equal employment opportunities, benefits, conditions and treatment in all areas***

***See Appendix 1 for full text***

4.41 Article 11 of CEDAW requires States to take appropriate measures to ensure women have the same rights as men to work, with equal employment opportunities, benefits, conditions and treatment in all areas. This includes protection from discrimination in selection for employment and in the workplace,<sup>259</sup> as well as equality in remuneration and social security benefits in cases of retirement, unemployment, sickness, and other incapacity to work. According to the Legislative Compliance Indicators, legislation should be in place to ensure equality in this regard.<sup>260</sup>

4.42 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. Workplaces are required to provide paid maternity leave, allow reasonable nursing time during work hours for women with young children, and provide measures for health protection during pregnancy, including protection

<sup>259</sup> Note CEDAW Legislative Compliance Indicator 11.3, Appendix 2. Protection in the workplace also includes the provision of a safe working environment free from sexual harassment (discussed further under Part 2(D) of the Report).

<sup>260</sup> See CEDAW Legislative Compliance Indicators 11.1, 11.4 and 11.5, and 'Old Indicator numbers' 11.1 and 11.9, Appendix 2.

from harmful types of work. According to the Legislative Compliance Indicators, these should be set out in legislation.<sup>261</sup>

#### *Protection from discrimination and guarantee of equality in employment*

4.43 In addition to the guarantee of freedom from discriminatory legislation under Article 15 of the Constitution, Samoa has specific legislation prohibiting discrimination in both the public and private sector workplaces.

4.44 Employment in the public sector is regulated under the *Public Service Act 2004*, which sets out the principles of employment 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.<sup>262</sup>

4.45 Employment in the private sector is regulated under the *Labour and Employment Relations Act 2013*, which requires labour and employment to be consistent with the International Labour Organisation (ILO) requirements.<sup>263</sup> Under the Act, direct or indirect discrimination on the basis of gender, sex, sexual orientation, marital status, pregnancy, or family responsibilities is expressly prohibited.<sup>264</sup> Furthermore, men and women are required to be paid the same for the same work (equality of pay), and equal remuneration for work of equal value (pay equity).<sup>265</sup>

4.46 Social security benefits are not differentiated according to the gender of the worker and both men and women are entitled to social security benefits.<sup>266</sup> These benefits however apply only in formal employment. Compensation of workers who suffer personal injury by accident arising out of, or in the course of their employment is provided under the *Accident Compensation Act 1989*<sup>267</sup>, which also provides for compensation to dependents of workers who die from a work related injury.<sup>268</sup> Similarly, this only relates to formal employment.

4.47 Consequently, the establishment of a regulatory framework for the informal sector with a view to providing women with access to social security and other benefits was

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<sup>261</sup> See CEDAW Legislative Compliance Indicators 11.6-11.9, Appendix 2.

<sup>262</sup> *Public Service Act 2004* (Samoa) s 18(2)(d)-(h).

<sup>263</sup> *Labour and Employment Relations Act 2013* (Samoa) Long Title.

<sup>264</sup> *Ibid* s 20(2).

<sup>265</sup> *Ibid* ss 19 and 20(4).

<sup>266</sup> *National Provident Fund Act 1972* (Samoa) Part XII. Social security benefits include the retirement fund, death benefits and the senior citizens fund.

<sup>267</sup> *Accident Compensation Act 1989* (Samoa) Long title.

<sup>268</sup> *Ibid* Long title and s 2(2) states that, dependents include the wife of a deceased male person and any children under the age of 18.

recommended by the CEDAW Committee.<sup>269</sup> This concern was premised on the view that more women are in informal employment and are therefore disproportionately affected by not being eligible for these entitlements or compensation.

#### *Pregnancy and maternity*

4.48 Since concerns were noted by the CEDAW Committee that maternity leave in the public and private sectors was not in line with international standards,<sup>270</sup> provisions for maternity leave in the public sector and private sector improved significantly.<sup>271</sup>

4.49 Entitlements for maternity leave in the public sector increased in 2015 under the PSC's *Working Conditions and Entitlements Policy*. Under this policy female public servants are entitled to 26 weeks maternity leave, with 12 of those weeks with full pay, and 14 weeks without pay.<sup>272</sup> In addition, there is flexibility in utilisation of maternity leave within a 12 month period.<sup>273</sup> In comparison, male public servants are entitled to 5 working days of paternity leave with full pay in any one year.<sup>274</sup>

4.50 In the private sector, the *Labour and Employment Relations Act 2013* provides a female employee 6 weeks maternity leave, with 4 of those weeks with full pay and 2 weeks without pay. Alternatively a female employee is entitled to 6 weeks maternity leave on two-thirds of her normal pay.<sup>275</sup> This is available to employees who have worked continuously for 12 months or more with the same employer.<sup>276</sup> 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.<sup>277</sup> Women returning to work after taking maternity leave are entitled to resume their position at the same rate of pay.<sup>278</sup> In comparison, a male employee is only entitled to a minimum of 5 days paternity leave where he has worked continuously for 12 months or more for his employer.<sup>279</sup>

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<sup>269</sup> CEDAW Committee, '*Concluding Observations of the Committee on the Elimination of Discrimination against Women: Samoa*', 52<sup>nd</sup> sess, UN Doc CEDAW/C/WSM/CO/4-5 (9-27 July 2012) <<http://www2.ohchr.org/english/bodies/cedaw/docs/co/CEDAW-C-WSM-CO-4-5.pdf>> (Accessed 7/12/2015) at [30-31].

<sup>270</sup> *Ibid* at [31].

<sup>271</sup> Public Service Commission, *Working Conditions and Entitlements Policy 2015* (2015) at 37-38.

<sup>272</sup> *Ibid* at 39-40. Under the old policy, these were not less than 8 weeks and no more than 26 weeks respectively.

<sup>273</sup> *Ibid*. Under the old policy leave had to be taken consecutively within a 6 month period.

<sup>274</sup> *Ibid* at 41.

<sup>275</sup> *Labour and Employment Relations Act 2013* (Samoa) ss 43-44.

<sup>276</sup> *Ibid* s 43(3)(b).

<sup>277</sup> *Ibid* s 26(1)(a). This also applies to termination of employment, annual, sick and other leave and paid public holidays.

<sup>278</sup> *Ibid* s 45(3).

<sup>279</sup> *Ibid* s 46.

4.51 Under the *Labour and Employment Relations Act 2013* it is unlawful for an employer to terminate the employment of an employee during or after her pregnancy, except on grounds unrelated to the pregnancy or birth of the child. In such case, the onus is on the employer to justify grounds for termination.<sup>280</sup> There is no express equivalent provision in the *Public Service Act 2004*, however it does set out specific matters that may result in termination applicable to all workers in the Public Sector (such as poor work performance, and in the case of CEOs misbehaviour and physical or mental incapacity).

4.52 In the private sector female employees returning to work after maternity leave are entitled to daily breaks or a daily reduction in working hours to breast feed or provide milk for her child.<sup>281</sup> In the public sector, Government Ministries, public bodies and state owned enterprises are directed by Cabinet to provide a day care room or space for lactating mothers to breastfeed their newborns should the need arise.<sup>282</sup>

### Submissions

4.53 In its Discussion Paper the Commission sought submissions on the following:

- *Are there any barriers to a person taking action against discriminatory practices in the workplace?*
- *Would temporary special measures, such as quotas, be appropriate to overcome the gender imbalance at the highest level of employment?*
- *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?*
- *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)?*
- *Are there any other issues that need to be addressed to allow mothers to continue employment?*

4.54 Submissions received indicated that there are no known barriers to a person taking action against discriminatory practices in the workplace.<sup>283</sup>

4.55 Discussions on whether quotas would be appropriate to overcome the gender imbalance particularly at the highest level of employment came about as women seemed more concentrated in middle management level and lower level positions with certificate or

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<sup>280</sup> Ibid s 45.

<sup>281</sup> Ibid s 45(4).

<sup>282</sup> *Cabinet Directive FK (11) 34 (2013)*.

<sup>283</sup> Submissions from public consultations.

diploma qualifications,<sup>284</sup> but not at the CEO level.<sup>285</sup> Submitters were divided on whether this indicated the presence of non-legislative barriers to women's access to the highest level positions in both public and private sector.<sup>286</sup>

4.56 MWCS and PPSEAWA considered that temporary special measures would be appropriate but did not give reasons for this view.<sup>287</sup> NHRI noted that the more fundamental barriers to gender equality (such as those steeped in culture and tradition) should be addressed to overcome gender imbalance at the highest level of employment in a meaningful and effective way. It further considered that any such measures must be in tandem with other policy measures to facilitate women's increased involvement in the workforce, such as efforts to promote more equal share of childcare between men and women, more family-friendly flexible working hours, and the encouragement of commercial child care businesses in business centres.<sup>288</sup>

4.57 On the other hand, PSC considered that temporary special measures to overcome the gender imbalance at the highest level of employment in Samoa are already in place given the recent Constitutional amendment requiring a minimum of 10% of women as Members of the Legislative Assembly. It emphasised that the *Public Service Act 2004* stipulated the importance of appointing and promoting persons based on merit, and that in terms of process, the interviewing panel must be equally represented by both genders. PSC also referred to the increased maternity leave under the *Working Conditions and Entitlements Policy 2015*, flexible working hours in the public sector and children at work policies available to working mothers (discussed further below).<sup>289</sup> SFA was of the view that women are equally represented at the highest levels of employment and that quotas may conversely negatively impact women's morale.<sup>290</sup>

4.58 In relation to social security and benefits for the informal work sector, NHRI outlined some of the characteristic features of informal employment as noted by the ILO. These include the lack of protection in the event of non-payment of wages, compulsory overtime or extra shifts, lay-offs without notice or compensation, unsafe working conditions and the absence of social benefits such as pensions, sick pay and health insurance. Furthermore, the failure to include the informal sector within existing social security and benefits may disproportionately impact women as women are concentrated in this sector. It noted that rural women in Samoa are particularly disadvantaged. As such, NHRI recommended that

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<sup>284</sup> Public Service Commission (PSC), *Human Resource Management Report 2012-2013* (2012); Dr M Kerslake, *Where Are The Women In Government Services?* (2014).

<sup>285</sup> Note that data is only available in relation to the Government Ministries.

<sup>286</sup> PSC, *Human Resource Management Report 2012-2013* (2012).

<sup>287</sup> MWCS (Written submission 2015); PPSEAWA (Written submission 2015).

<sup>288</sup> NHRI (Written submission 2015).

<sup>289</sup> PSC (Written submission 2015).

<sup>290</sup> SFA (Written submission 2015).

MCIL, in collaboration with MWCSD, review the circumstances under which social security is provided with a view to providing some protections for persons working in the informal sector.

4.59 In relation to maternity leave entitlements in both the public and private sector, submitters generally agreed that maternity leave entitlements in the private sector should be equivalent to those provided in the public sector.<sup>291</sup>

4.60 PSC considered that the *Working Conditions and Entitlements Policy 2015* applicable to the Public Sector was in line with the ILO and CEDAW, with maternity leave entitlements being 26 weeks leave in total (including 12 weeks with pay). It further noted that its revised policy also recognises for the first time, stillborn babies, miscarriages and legal adoption of newborn babies and those up to 12 months. Leave entitlements for these female employees will be up to 4 weeks with pay and up to 26 weeks without pay.<sup>292</sup> Furthermore flexible working hours in the Public Sector enable mothers to start later or earlier to assist them with either breastfeeding or dropping and picking up their children from school.<sup>293</sup>

4.61 In relation to issues that need to be addressed to allow mothers to continue employment, submitters put forward various suggestions. The following are some suggestions that have not been touched on before.<sup>294</sup>

- Promoting the establishment of commercial childcare centres in business districts;
- More family-friendly, flexible working hours for all employment sectors (note: flexibility of working hours is already a feature of the Public Sector);
- More options for part-time work, job sharing etc;
- Allowing maternity leave to be taken as parental leave which can be taken by either male or female or shared between both parents; and
- Measures to promote and encourage men's involvement in childcare.

### **Commission's views**

#### *Protection from discrimination and guarantee of equality in employment*

4.62 The recent enactment of the *Labour and Employment Relations Act 2013*, prohibiting discrimination and codifying principles of equality in employment conditions and in pay and pay equity, provides a legislative framework for employment that is broadly consistent with the requirements of CEDAW and compliant with the specific legislative Compliance Indicators

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<sup>291</sup> Submissions from public consultations.

<sup>292</sup> PSC (Written submission 2015).

<sup>293</sup> Ibid; PSC, *Working Conditions and Entitlements Policy 2015* (2015) at [Determination 9].

<sup>294</sup> Submissions from public consultations.

relating to equality and non-discrimination in employment.<sup>295</sup> The enactment of this legislation was strongly recommended by the CEDAW Committee.<sup>296</sup>

4.63 The CEDAW Committee urged for the establishment of a regulatory framework for the informal sector with a view to providing women access to social security and other benefits.<sup>297</sup> This appears to have been raised due to previous acknowledgement by Samoa that women are concentrated in the informal sector where there are no benefits such as social security. However, the Commission notes a survey carried out in 2012 that suggests there are less women (66.3%) in informal employment than men (68.3%).<sup>298</sup> The Commission considers that both men and women in informal employment are equally vulnerable by their exclusion from social security schemes and other benefits. Therefore, the survey does not correlate with the previous submission to the CEDAW Committee that women in the informal sector are more disadvantaged than men.

4.64 The Commission considers that Samoa provides the protection required under CEDAW for compulsory maternity leave with pay and without loss of former employment and seniority as per Article 11.2(b), and has adhered to the CEDAW Committee's request for improvements to maternity leave in both the public and private sector. Nonetheless, it may be argued that full compliance with Article 11 of CEDAW has not been achieved (despite recent increases) as the maternity leave entitlements still fall short of CEDAW Committee's recommendations in both sectors to have 14 weeks paid leave.<sup>299</sup>

4.65 Additionally, it is worth noting that the maternity leave provisions in the private sector (with 6 weeks paid leave) are significantly less than those provided for in the public sector (12 weeks paid leave). The Commission therefore considers that a review should be carried out by relevant Government Ministries (for example, Ministry of Finance (**MoF**) and MCIL) concerning a gradual increase of maternity leave provisions in the private sector to be comparative to maternity leave entitlements of the public sector. Such review is necessary because even if such increases are incremental and over a reasonable period of time, it will result in a significant cost to the private sector, and may result in further discrimination in the hiring of women due to the potential cost to the business of paid maternity leave.

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<sup>295</sup> CEDAW Legislative Compliance Indicator 11.1, Appendix 2.

<sup>296</sup> CEDAW Committee, *'Concluding Observations of the Committee on the Elimination of Discrimination against Women: Samoa'*, 52<sup>nd</sup> sess, UN Doc CEDAW/C/WSM/CO/4-5 (9-27 July 2012) <<http://www2.ohchr.org/english/bodies/cedaw/docs/co/CEDAW-C-WSM-CO-4-5.pdf>> (Accessed 7/12/2015) at [31(a)].

<sup>297</sup> Ibid at [31 (b)].

<sup>298</sup> MCIL and Samoa Bureau of Statistics, *'Samoa Labour Market Update'*, *International Labour Organisation Office for Pacific Island Countries* (August 2014) at 2.

<sup>299</sup> CEDAW Committee, *'Concluding Observations of the Committee on the Elimination of Discrimination against Women: Samoa'*, 52<sup>nd</sup> sess, UN Doc CEDAW/C/WSM/CO/4-5 (9-27 July 2012) <<http://www2.ohchr.org/english/bodies/cedaw/docs/co/CEDAW-C-WSM-CO-4-5.pdf>> (Accessed 7/12/2015) at [31].

4.66 The Commission considers that paternity leave should also be revised, as the very limited provision for paternity leave may also in itself inhibit women returning to work. Alternatively, the Commission considers that the ability for maternity leave to be taken as parental leave which can be taken by either male or female or shared between both parents should be explored. At minimum this combined leave should equate to the CEDAW Committee's recommendation of 14 weeks paid maternity leave.

4.67 The Commission also considers that measures have been taken to encourage the provision of child care facilities as per Article 11.2(c) where public employers are required to provide day care facilities (by virtue of Cabinet directive) and also to allow nursing of a child after returning to work. However the Commission notes there is no equivalent requirement in the *Labour and Employment Relations Act 2013* for private employers in relation to child care facilities.

#### **Recommendations**

55. Explore how persons in informal employment (not just women) may be brought within the reach of some social security schemes as well as parental leave and other labour protection legislation.

56. Revise and increase paternity leave to reduce barriers to women remaining or returning early to the workplace after childbirth and enable men to take on the role of primary caregiver. In the alternative, implementing a parental leave policy which can be taken by either male or female or shared between both parents.

57. A review should be carried out by Ministry of Commerce Industry and Labor concerning a gradual and incremental increase of maternity leave provisions in the private sector (6 weeks paid leave) to be comparative to maternity leave entitlements of the public sector (12 weeks).

58. Employers should implement measures to promote and encourage men's involvement in childcare.



## E. Marriage and family

### ***CEDAW Articles relevant to this Part include Article 16***

- ***Article 16: to ensure equality and autonomy of women in all matters regarding the formation and welfare of the family, including laws relating to marriage, divorce, child custody, property division and inheritance***

***See Appendix 1 for full text***

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

4.69 Legislative Compliance Indicators include legislation that provides the same rights and responsibilities with men during marriage and at its dissolution,<sup>300</sup> the same rights and responsibilities towards children, and equal rights in relation to family property.<sup>301</sup>

### *Marriage*

4.70 In Samoa the minimum age for males to marry is 18, and for females is 16 years.<sup>302</sup> In order for a young man under the age of 21 or a young woman under the age of 19 to be married, the consent of a parent or guardian must first be obtained.<sup>303</sup> The differentiation of ages of marriage and of the parental consent requirement was highlighted by the CEDAW Committee as a particular issue for Samoa.<sup>304</sup>

### **Submissions**

4.71 The Commission sought submissions on the following:

- *Should the minimum age of marriage be amended to be 18 for both men and women?*
- *Should the requirement of parental consent to marriage apply equally to both genders? If so what age is appropriate for this requirement to end?*

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<sup>300</sup> CEDAW Legislative Compliance Indicator 16.2, Appendix 2.

<sup>301</sup> CEDAW Legislative Compliance Indicator 16.4, Appendix 2. In relation to CEDAW Article 16(1)(e), see discussion under Article 12 above.

<sup>302</sup> *Marriage Ordinance 1961* (Samoa) s 9.

<sup>303</sup> *Ibid* s 10.

<sup>304</sup> CEDAW Committee, 'Concluding Observations of the Committee on the Elimination of Discrimination against Women: Samoa', 52<sup>nd</sup> sess, UN Doc CEDAW/C/WSM/CO/4-5 (9-27 July 2012)

<<http://www2.ohchr.org/english/bodies/cedaw/docs/co/CEDAW-C-WSM-CO-4-5.pdf>> (Accessed 7/12/2015) at [39].

4.72 The majority of submitters agreed that the minimum age of marriage should be amended to be 18 for both men and women and that the age requirements for parental consent to marriage should also be the same for both genders.<sup>305</sup> NHRI elaborated stating that a law permitting women to get married earlier than men perpetuates the stereotype that a woman's main role is as a wife and a mother.<sup>306</sup>

### Commission's Views

4.73 Samoa's legislation is fully compliant with the majority of the Legislative Indicators guaranteeing equal rights to marriage for men and women.

4.74 However, the distinction regarding the minimum age imposed for marriage and parental consent is contrary to the recommendations of the CEDAW Committee and to Samoa's commitments under the United Nations Convention on the Rights of a Child.<sup>307</sup> It is the Commission's view that the minimum age for marriage and parental consent should be amended so that it is the same for both genders. Similarly, parental consent requirements should also be amended so that they apply equally for both genders.

#### *Divorce, alimony, maintenance and division of property*

4.75 Part III of the *Divorce and Matrimonial Causes Ordinance 1961* provides for alimony, maintenance, and custody, and governs the division of property at the dissolution of marriage. The Court is empowered to 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.<sup>308</sup> In respect of property of the parties to a marriage, the Court may take into account non-financial contributions made to the welfare of the family, and the needs of the parties.<sup>309</sup>

4.76 In addition, the *Maintenance and Affiliation Act 1967* also provides for applications for maintenance by one spouse against another if the other fails to provide adequate maintenance.<sup>310</sup> 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.

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<sup>305</sup> Submissions from public consultations.

<sup>306</sup> NHRI (Written submission 2015).

<sup>307</sup> Samoa Law Reform Commission, *Child Care and Protection Legislation Final Report 11/13* (2013) (Raising this age has also been recommended by the Commission in its CRC Final Report).

<sup>308</sup> *Divorce and Matrimonial Causes Ordinance 1961* (Samoa) s 22; See *Arp v Arp* [2008] WSSC 35.

<sup>309</sup> *Ibid* s 22B.

<sup>310</sup> *Maintenance and Affiliation Act 1967* (Samoa) ss 16 and 17.

## Submissions

4.77 The Commission sought submissions on the following:

*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?*

4.78 Submitters who addressed the question concerning spousal maintenance provisions agreed that these should be amended to be gender neutral, rather than containing specific provisions applying to the maintenance of wives by husbands.<sup>311</sup> It was raised that this could promote gender equality more broadly by making it easier and more accepted for women to perform the role of the breadwinner and for men to take a more active role in the raising and caring of children, including as their primary caregiver.<sup>312</sup>

## Commission's Views

4.79 Samoa's legislation is broadly consistent with the Article 16 requirements and is compliant with the Compliance Indicators relating to the effects of dissolution of marriage and division of property.

4.80 However, there remain gender-specific maintenance provisions that reinforce the stereotype of the husband as the breadwinner for the family and the wife as the caretaker of the home. Although these provisions have been specifically articulated for the protection of women and promotion of their interests in the event of the dissolution of the marriage, gender neutral language would perhaps be appropriate given the obligation under Article 5 of CEDAW to remove legislation that promotes gender-stereotyping.

### *Custody, maintenance and responsibility for children*

4.81 The Legislative Compliance Indicator for Article 16(1)(f) requires legislation affording men and women the same rights and responsibilities towards children *irrespective of marital status*.<sup>313</sup>

4.82 Under the *Maintenance and Affiliation Act 1967*, the Court has broad powers to order maintenance payments for children against a parent of the child.<sup>314</sup> This includes the ability for an unmarried mother to claim maintenance payments from the father of the child.

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<sup>311</sup> Submissions from public consultations.

<sup>312</sup> NHRI (Written submission 2015).

<sup>313</sup> See CEDAW Legislative Compliance Indicator 16.9 and 16.10, Appendix 2.

<sup>314</sup> *Maintenance and Affiliation Act 1967* (Samoa) 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.

However, in the absence of such an order, the obligations towards a child born out of wedlock under the law rest with the mother, and not the father.<sup>315</sup>

## Submissions

4.83 The Commission sought submissions on the following:

*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?*

4.84 The majority of submissions raised that child maintenance and custody laws should be amended to depend on parenthood rather than marriage of the parents.<sup>316</sup> It was submitted that the current laws disadvantage women in relation to men and that equal responsibility for men and women in relation to children born out of wedlock needs to be guaranteed by the maintenance and custody laws.<sup>317</sup>

## Commission's Views

4.85 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.<sup>318</sup> However, in relation to children born out of wedlock, equal responsibility may only be enforced through a court order sought by a mother within 6 years of the child's birth. Without this order, the responsibility for raising the child solely rests with the mother.

4.86 The current laws should be amended so the obligations under the custody and maintenance laws are dependent on parenthood as established by either a birth certificate or court order, rather than marriage of the parents.

## Family Court

4.87 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. The Family Court established under the *Family Court Act 2014* now has jurisdiction over any proceedings under the *Family Safety Act 2013*, *Maintenance and Affiliation Act 1967*, *Divorce and Matrimonial Causes Act 1961*, and *Marriage Ordinance 1961*.<sup>319</sup>

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<sup>315</sup> See also *Infant Ordinance 1961* (Samoa) s 2 ('parent' includes the mother of a child born out of wedlock, but not, specifically, the father).

<sup>316</sup> Submissions from public consultations.

<sup>317</sup> NHRI (Written submission 2015).

<sup>318</sup> *Infants Ordinance 1961* (Samoa) ss 4, 7 and 8. These provisions have no gender component, and can be made by in favour of any person.

<sup>319</sup> *Family Court Act 2014* (Samoa) s 8.

4.88 The *Family Court Act 2014* sets out that the Court must, as far as possible, promote conciliation<sup>320</sup> and that parties must engage in alternative dispute resolution (**ADR**) prior to commencing proceedings before the Family Court, unless the circumstances of the case make it inappropriate.<sup>321</sup>

### **Submissions**

4.89 The Commission sought submissions on the following:

*Should ADR 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?*

4.90 Only NHRI and PPSEAWA responded to the question concerning alternative dispute resolution and conciliation in circumstances where there is a history of domestic violence.

4.91 NHRI stated that it believes in the validity of encouraging the use of ADR. It maintained however that the current provisions do not adequately protect vulnerable women, in situations of unequal power relations, who may feel compelled to engage in ADR. It recommended consideration of additional measures (which could be included in regulations under the *Family Court Act 2014*) to better protect women in these cases. For example, the regulations could require that the parties to the dispute are seen by a counsellor who can advise the court if ADR would be inappropriate in the circumstances.<sup>322</sup>

4.92 PPSEAWA considered that the present process should remain as it is and that trust be placed in the Family Court to make changes if and when necessary. It noted that the law has only been in operation for a year and should be monitored and evaluated in a timely manner.<sup>323</sup>

### **Commission's Views**

4.93 The duty on the Court to promote conciliation and to require alternative dispute resolution between the parties may be inconsistent with Article 16 especially in cases with a history of domestic violence. However, the current process already provides for a sufficient balance to this duty in that the obligation to promote conciliation only applies 'so far as

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<sup>320</sup> Ibid s 6.

<sup>321</sup> Ibid s 7.

<sup>322</sup> NHRI (Written submission 2015).

<sup>323</sup> PPSEAWA (Written submission 2015).

possible', and the requirement for alternative dispute resolution may be disregarded if the Court is satisfied that it would be "inappropriate" in certain cases.<sup>324</sup>

4.94 Therefore, the Commission believes that the 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.

**Recommendations:**

59. The minimum legal age for marriage stipulated in legislation should be amended to 18 years for both males and females.

60. The requirement of parental consent to marriage should apply equally to both genders and should be required for the marriage of any person under 21 years.

61. The language in the legislation regarding spousal maintenance and alimony upon the dissolution of marriage should be amended to be gender neutral to reflect spousal maintenance rather than maintenance of the wife. Furthermore, the legislative criteria considered by the Court before the issuance of a spousal maintenance order should be the same for both genders.

62. Child maintenance and custody laws should be amended so that the obligations of raising the child is dependent on parenthood rather than the marriage of the parents to reflect the equal responsibility on both parents in child rearing and support.

**F. Health Care**

***This Part relates to CEDAW Article 12***

***- Article 12: to eliminate discrimination against women in health care and to ensure women have equal access to all health care services***

***See Appendix 1 for full text***

4.95 CEDAW Article 12 requires States to eliminate discrimination against women in health care and to ensure women have equal access to all health care services, including family planning. Furthermore, States must ensure that appropriate maternal health care is provided to women during pregnancy and the post-natal period.

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<sup>324</sup> *Family Court Act 2014 (Samoa).*

4.96 Although there are some issues relating to access to health care services in the rural area, particularly the provision of family planning, maternal health and sexual services partially due to the stigma around contraception, this is not reflective of the legislative framework. Such issues are largely due to resource allocation by the responsible ministry and related services. These are issues that are currently being reviewed and addressed through ongoing policy reviews.

4.97 The Commission considers that Samoa's legislation is compliant with CEDAW Article 12 particularly as Article 15 of Samoa's Constitution requires that health care services be provided in a non-discriminatory manner. A comprehensive discussion on Samoa's compliance with Article 12 is provided in the Discussion Paper,<sup>325</sup> although in relation to abortion Article 12 is discussed separately under Part 2 of the Report.

#### **G. Equality before the Law in Economic and Social Benefits, and conducting Legal Transactions**

*This Part relates to CEDAW Article 13 and 15*

- *Article 13: equal entitlement to family benefits regardless of marital status, equal rights to receive financial credit*
- *Article 15: equality of women and men before the law and in conducting legal transactions*

*See Appendix 1 for full text*

4.98 CEDAW Article 13 requires States to guarantee women 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. CEDAW Article 15 requires States to guarantee women equality with men before the law and in conducting legal transactions and that contracts and instruments that restrict the legal capacity of women should be nullified. Furthermore it requires that women should be afforded the same rights as men to choose their place of residence and domicile.

4.99 The Commission notes that there are no legislative barriers to prevent women from accessing family benefits or financial credit or from participating in social and cultural activities as set out in CEDAW Article 13. The Samoan Constitution affirms women's right to equal entitlement to benefits in stating that any State benefits must not be discriminatory on

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<sup>325</sup> Samoa Law Reform Commission, *Convention on the Elimination of Discrimination Against Women Discussion Paper*, Discussion Paper 03 (2015) at 81.

the basis of sex or family status.<sup>326</sup> Moreover, a woman's right to retain legal capacity after marriage is expressly affirmed under the *Samoa Act 1921*.<sup>327</sup>

4.100 Additionally, there is no legislation in Samoa that denies women the right to conduct legal transactions such as entering contracts or administering property. Nor are there any specific legislative limits to a woman's legal capacity. Any such legislation would be contrary to Article 15 of the Constitution and the *Samoa Act 1921*.

4.101 The Commission consider that Samoa's legislation is compliant with CEDAW Articles 13 and 15. A comprehensive discussion on Samoa's compliance with these articles is provided in the Discussion Paper.<sup>328</sup>

## H. Nationality

***This Part relates to CEDAW Article 9***

***- Article 9: equal rights with men to acquire, change or retain nationality as well as equal rights with respect to the nationality of their children***

***See Appendix 1 for full text***

4.102 Article 9 states that women shall be granted equal rights with men to acquire, change or retain their nationality. Specifically, the article requires States to ensure that a woman's nationality shall not be impacted by her marital status. Furthermore, Article 9 states that women shall have equal rights with men with respect to the nationality of their children.

4.103 The *Citizenship Act 2004* governs the rights regarding nationality. The language in the legislation is gender neutral and women are conferred the same rights as men regarding their own nationality and that of their children, irrespective of their marital status.

4.104 The Commission consider that Samoa's legislation is compliant with CEDAW Article 9. A comprehensive discussion on Samoa's compliance with this article is provided in the Discussion Paper.<sup>329</sup>

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<sup>326</sup> *Constitution of the Independent State of Samoa 1960* (Samoa) art 15.

<sup>327</sup> *Samoa Act 1921* (Samoa) s 360.

<sup>328</sup> Samoa Law Reform Commission, *Convention on the Elimination of Discrimination Against Women Discussion Paper*, Discussion Paper 03 (2015) at 87 and 93.

<sup>329</sup> *Ibid* at 61.



## **CONCLUSION**

Since ratification in 1992, Samoa has made significant progress towards meeting its obligations under CEDAW. The Legislative Compliance Indicators have provided a useful guide to assess Samoa's compliance with CEDAW, however the Commission considers that it is not necessary for Samoa to have full compliance with all indicators to achieve compliance with the relevant Article. For example, there are instances where non-legislative measures in place are effective in achieving the CEDAW objectives in their own right, despite Compliance Indicators suggesting legislation. Overall, Samoa has had significant legislative reforms in many key areas.

In relation to improvements in women's participation in national governance, amendments to the Constitution have ensured that women comprise at least 10% of Parliament. These legislative changes may have ripple effects with women being viewed, supported and encouraged as effective leaders in both local and national Government.

In relation to family violence, Samoa's legislation is mostly compliant with the Legislative Compliance Indicators, with a significant amount of legislative reform in recent years to strengthen sanctions, processes and remedies around family violence. These include the *Family Safety Act 2013* which provides protection and recourse for victims of family violence, including the issuance of protection orders; the establishment of a specialised Family Court under the *Family Court Act 2014* as well the establishment of a specialised ADC in 2016. In addition, recent enactment of the *Crimes Act 2013* also provides a range of offences covering family violence, and puts in place appropriate measures to condemn and sanction discrimination against women.

Legislative Compliance Indicators concerning family violence that are not met (such as the lack of specific legislation mandating vigilant and speedy prosecution of perpetrators of family violence) have been noted and appropriate recommendations made for improvements.

As with family violence, Samoa's laws regarding sexual violence are largely consistent with CEDAW obligations and relevant Legislative Compliance Indicators. These include the criminalising of particular conduct such as sexual violation in the form of unlawful sexual connection with another person which does not require penetration; recognition of marital rape as an offence; and people trafficking offences (to name a few). Furthermore, penalties for sexual related offences have also been generally increased under the *Crimes Act 2013*, reflecting the seriousness of these offences. New provisions under the *Divorce and Matrimonial Causes Ordinance 1961* in 2010 that are quite significant for Samoa, include non-fault-based divorce (particularly where domestic violence is involved) as well as provisions that ensure that non-financial contributions are also taken into account in marital property disputes.

There have been significant improvements in employment legislation which specifically incorporates principles of equality and non-discrimination with the enactment of the *Labour and*

*Employment Relations Act 2013.* Improvements have also been made to pregnancy and maternity laws to increase maternity leave and allocate space for new mothers caring for children in the workplace. Legislative Compliance Indicators relating to equality in employment have been noted and appropriate recommendations made for improvement.

The Commission considers that in relation to Samoa's obligations under CEDAW, overall Samoa has in place measures appropriate to the Samoan context (either legislative or non-legislative, or both), that work towards the elimination of discrimination against women and that achieve many, if not most, objectives of CEDAW. Although there is always room for more complete or more improved compliance, with Government consciously continuing to direct its policy towards progressively removing discriminatory legislation whilst taking into account Samoa's customs and traditions, further progress towards meeting CEDAW obligations can be expected.

## **LIST OF RECOMMENDATIONS**

1. Consider whether the definition of domestic violence in the *Family Safety Act 2013* should include economic or financial abuse (for example, denying or limited access to food or basic needs and/or financial resources, or preventing or restricting employment opportunities or access to education) to be consistent with some comparative jurisdictions and to reflect the more nuanced understanding of the nature of domestic violence.
2. The *Family Safety Act 2013* should expressly include a police officer as a person that may act on behalf of a complainant.
3. The *Family Safety Act 2013* should enable a complaint to be made for a protection order whether or not consent is given by the individual affected, where a police officer, child welfare officer, health service provider or social worker reasonably suspects that the individual has been or is likely to be assaulted if a protection order is not issued.
4. Amend the *Family Safety Act 2013* to require Police to serve the respondent the protection order promptly or at the earliest opportunity. In the event the respondent cannot be located and service cannot be effected promptly, the Police should be required to inform the complainant as well as members of her family or people close to her that would help with monitoring.
5. Enable the Court to extend the return date in cases where the complainant does not show up unless the Court is satisfied based on the circumstances that it would be safe to set it aside. This is to take into account legitimate reasons for the complainant's absence such as fear of the husband or his family, and the complainant's safety being at risk.
6. A protection order should be flexible enough to accommodate for situations in which communication between the victim and perpetrator would be required for example in relation to the care of young children. Recognizing that there is a risk posed to the victim, proper protection need to be in place such as ensuring the perpetrator is aware that improper use of this communication will be treated as a breach of the protection order.
7. Include protections in the *Family Safety Act 2013* for persons who report family violence, which may help to encourage an increased level of reporting.
8. By laws should be created under the *Village Fono Act* to establish guidelines to deal with perpetrators of domestic violence and to impose a positive duty on the village council to report instances of domestic violence to Police.

9. The Village *Fono* should also be required by law to help enforce protection orders.
10. The Village *Fono* should be encouraged to include offences and recourse for family violence in village bylaws.
11. Implement recommendations made by the Commission in its Alcohol Reform Report, particularly:
  - Raising awareness and education about the harms associated with alcohol is a must and should be a collaborative effort between the government and relevant government ministries, non-governmental organisations (**NGOs**), the Alcohol and Drugs Court (**ADC**) and the wider community.
  - Village Council should consider implementing by-laws to target alcohol consumption that will help reduce alcohol-related issues, in particular domestic violence.
12. The Domestic Violence Unit (**DVU**) should implement the following initiatives:
  - Prioritise and complete its domestic violence policy, which carefully considers the particular needs and experiences of outpost officers, particularly in quick information-sharing about domestic violence cases with superiors;
  - Training for DVU officers on responding to domestic violence complaints, particularly around communicating with victims. Refresher trainings by and for DVU staff should be carried out on an annual basis. These trainings should include a number of police officers in outposts on procedures to properly respond to domestic violence complaints, and should be broadly targeted so that there are a sufficient number of police officers in the outposts at any given time to provide assistance to victims of domestic violence.
  - Training for DVU officers on gathering evidence, taking witness statements, uniform procedures on file management in domestic violence cases and presenting that evidence in Court, as well as for protection order hearings.
  - Trainings on domestic violence and gender sensitizing issues in general should be incorporated into the police academy program to educate future policeman on underlying issues in domestic violence complaints as well as the proper responses in those situations.
13. Health professionals should undergo ongoing training to ensure that they are responding to family violence cases appropriately and that health service providers have domestic violence policies in place.
14. There needs to be a clearer referral process to service providers in handling domestic violence cases which could be achieved through formal memorandums between the key service providers (including Police, National Health Service, Samoa Victim Support Group) to

assist in expediting the processing of a domestic violence complaint and prevent cases from withdrawal due to inaction or delayed response.

15. Interactive partnerships between civil society groups, relevant government ministries and village communities need to be established to provide practical support for abused women (for example, through temporary accommodation or information) and that government should commit funding to support such initiatives where necessary.
16. In recognition of the effectiveness of rehabilitation programs in addressing recidivism among perpetrators of domestic violence, proper financial and technical support should be provided to the providers of this program to assist in its ongoing work.
17. The Village *Fono* to work more collaboratively with police to enforce protection orders and also any by-laws in place.
18. By laws should be created under the *Village Fono Act* to establish guidelines to deal with perpetrators of domestic violence and to impose a positive duty on the village council to report instances of domestic violence to Police.
19. Attitudinal change towards domestic violence should be specifically integrated into school curriculums at all levels to positively influence attitudes on intimate relationships and encourage a strict non tolerance for violence within the home.
20. Perceptions based on unfounded reasons preventing women from seeking protection should be addressed through strengthening protection orders, providing financial assistance and also awareness programmes to educate and encourage women that silence is not the solution to domestic violence.
21. Awareness programs, training and leadership programmes should be carried out by churches and the village council to address attitudes of those who downplay family violence. Parents and schools should also educate children on family violence.
22. Comprehensive awareness raising programmes about legal protections should be developed in consultation with villages and relevant governmental and NGOs.
23. A concerted effort should be made towards proper data collection by DVU for future research and policy development purposes. Furthermore, DVU should establish a data collection mechanism to obtain data from the outposts in Upolu and Savaii (for example, through monthly reports to DVU headquarters) to ensure comprehensive nationwide data is obtained.

24. The *Village Fono Act 1990* should be amended to exclude consideration of customary practices (for example, penalties imposed by the *Village Fono* and *ifoga* by the offender's family) in cases of violence against women (including sexual violence).
25. Programmes relating to domestic violence, anger management, alcohol and drugs abuse should be developed and different types of rehabilitation programs to try and change negative behaviours of inmates should be carried out in prisons.
26. Implement Recommendations made by the Commission in its Sex Offenders Register Report particularly:
  - Establishing a register for law enforcement and crime prevention, investigate and prosecute sex offences, reduce likelihood of re-offending and monitor sex offenders in the community.
  - Update sexual offending and re-offending information by relevant government ministries to allow government to be better informed about the decisions to be made to address the prevalence of sex crimes such as developing appropriate and effective rehabilitative initiatives for offenders.
27. Data should be regularly collected on the prevalence of trafficking and sexual exploitation of women, disaggregated by age and region, and relationship between victim and perpetrator.
28. It should be clear under the *Crimes Act 2013* that the offence of living on the earnings of prostitution should not capture children of the sex worker; however it may continue to capture a spouse of the sex worker or other family members who does so.
29. Make prostitution and solicitation provisions under the *Crimes Act 2013* gender-neutral.
30. Protection from harassment should be strengthened under the current legislation, by making sexual harassment (whether in the work place or elsewhere) a criminal offence and including civil remedies and redress for an employee who has been subject to harassment by their employer. It should also clearly capture sexual harassment by other employees.
31. There needs to be increased awareness and training on sexual harassment. All employers (including Government and private sector) should have in place appropriate policy and procedures against sexual harassment, and ensure that all staff are aware and trained in such policies and procedures. These should provide information on:
  - how to identify sexual harassment;
  - making a complaint (which should be confidential);
  - address who to raise it with, and how it may be resolved for example by mediation or making a complaint to the Ombudsman and where more information can be found;
  - collecting and storing data on sexual harassment incidents

32. Ministry of Education Sports and Culture (**MESC**) to finalise its 'National Violence Free Policy' for schools, ensuring input from the whole school (including teachers, students, parents, the local community and Ministry of Women Community and Social Development (**MWCSD**)) and that it covers sexual harassment. Once the Policy is finalised and rolled out, it should be accompanied by training for staff, with awareness raising programs developed for students and the local community. This should include particular focus on conduct that constitutes sexual harassment, reporting sexual harassment and complaints processes. Guidelines and procedures for reporting and responding to sexual harassment incidents may also need to be developed.
33. The Recommendation for a separate offence for sexual harassment, as identified above for employers, should also extend to teachers and cover conduct that falls short of criminal conduct under the *Crimes Act 2013*. For example, teachers should be prohibited from engaging in grooming conduct with students. This would include exposing children to indecent material, providing them with an intoxicating substance or inappropriately giving gifts with the intention of engaging in sexual activity. The Commission notes that this should apply to boys and girls alike.
34. No legislative amendments are required to the abortion laws. Although abortion is criminalised in Samoa, it is not inconsistent with CEDAW. The law permits abortion if the woman's life, physical or mental health is at risk up to 20 weeks gestation. Therefore, to effectively implement this legislation, health professionals should be required (through policy and subsequent training) to conduct proper assessments for all pregnant women who are victims of sexual crimes and for young pregnant girls to assess the physical and mental health impacts of giving birth.
35. Proper support systems should be set in place for young pregnant girls and victims of sexual crimes and adequate funding should be made available for this purpose. This should include free services such as counselling and social support groups.
36. Public education and awareness programs on the extreme physical and psychological effects experienced by victims of rape and incest should be established with the overall purpose of creating acceptance and understanding and reducing the stigma surrounding victims of rape and incest.
37. By and large, the focus should be shifted to prevention initiatives such as compulsory sex education in schools, greater proliferation of public awareness programs on the importance of contraception/family planning, the effects of unwanted pregnancies, etc.
38. There should be a concerted effort at improving both men and women's access to effective and free or affordable contraception.

39. Proper data collection systems should be in place to assist in identifying the prevalence of illegal abortions in Samoa, for further consideration of this issue in future.
40. There should be a legislative prohibition around the restrictions on *matai* titles conferred to women due to their gender.
41. In villages where women are prohibited from participating in village *fono*, alternatives to encourage their participation should be explored including:
  - The establishment of a separate Women's Committee with allotted meetings with the Village Fono to discuss certain village matters;
  - Allowing female representatives who will sit on certain village fono meetings where issues pertaining to women are discussed.
42. Women's Committees should be given legal recognition under the *Village Fono Act* to ensure their participation in significant village decisions or issues particularly relating to women.
43. Cabinet to reconsider MWCSO proposal for remuneration for *Sui Tama'ita'i o le Nu'u* to be comparable to *Sui o le Nu'u* to reflect and recognize their equally significant role.
44. Legislation establishing public boards should include a provision to ensure gender equity or at least a stipulated number of female members.
45. To address the underrepresentation of women in leadership positions, there should be a concerted effort on public awareness, education campaigns and programs focused on leadership empowerment and encouraging participation by women in village governance. These programs should also educate and emphasize the value attached to the contribution of women to village and national decision making.
46. Adequate funding, resourcing and capacity building should be made available to carry out these public awareness programs.
47. Cabinet should mandate the consideration of female representation in high level diplomatic appointments.
48. The Government needs to continue to work collaboratively with non-governmental organisations providing adequate financial and material assistance to assist with their work in recognizing and promoting of women's issues in Samoa.
49. The MWCSO's functions under the *Ministry of Women's Affairs Act 1990* should be broadened to capture CEDAW objectives, particularly in promoting roles for women beyond traditional social norms, including but not limited to:



- encouraging and promoting women's leadership at a village and national level and participation in all aspects of the public sphere;
  - reduce gender stereotyping and encourage and promote substantive equality between men and women;
  - educate and empower women and girls about their rights under CEDAW to increase their participation in the public sphere and to seek to enforce and promote their rights and have their voices heard;
  - advise the Government on matters related to discrimination against women.
50. There is a need for legislative measures to provide greater protection against any discrimination by private bodies against women.
51. The statutory functions of MWCSO should be amended so that it does not encourage and promote gender stereotyping and should be more expansive, for example encourage leadership in women particularly in villages and national governance.
52. The Government should continue to direct its policy towards progressively removing discriminatory legislation when appropriate and with consideration of Samoan custom (in accordance with Article 15(4) of the Constitution).
53. Key Government agencies (such as MESC and MWCSO) should work towards changing negative social and cultural attitudes towards pregnant students in schools and encouraging such students and their parents to continue their education during pregnancy as well as after childbirth, as many parents and students are unaware that they may still attend school during their pregnancy, or following childbirth. Practical options to support this should be included in the policy paper being developed.
54. Student attendance and dropout rates (due to pregnancy and other reasons) need to be monitored, with improved enforcement by MESC of the reporting and prevention provisions under legislation.
55. Explore how persons in informal employment (not just women) may be brought within the reach of some social security schemes as well as parental leave and other labour protection legislation.
56. Revise and increase paternity leave to reduce barriers to women remaining or returning early to the workplace after childbirth and enable men to take on the role of primary caregiver. In the alternative, implementing a parental leave policy which can be taken by either male or female or shared between both parents.

57. A review should be carried out by MCIL concerning a gradual and incremental increase of maternity leave provisions in the private sector (6 weeks paid leave) to be comparative to maternity leave entitlements of the public sector (12 weeks).
58. Employers should implement measures to promote and encourage men's involvement in childcare.
59. The minimum legal age for marriage stipulated in legislation should be amended to 18 years for both males and females.
60. The requirement of parental consent to marriage should apply equally to both genders and should be required for the marriage of any person under 21 years.
61. The language in the legislation regarding spousal maintenance and alimony upon the dissolution of marriage should be amended to be gender neutral to reflect spousal maintenance rather than maintenance of the wife. Furthermore, the legislative criteria considered by the Court before the issuance of a spousal maintenance order should be the same for both genders.
62. Child maintenance and custody laws should be amended so that the obligations of raising the child is dependent on parenthood rather than the marriage of the parents to reflect the equal responsibility on both parents in child rearing and support.

## **APPENDIX 1:**

### **CONVENTION ON THE ELIMINATION OF ALL FORMS OF DISCRIMINATION AGAINST WOMEN**<sup>330</sup>

#### **The States Parties to the present Convention,**

Noting that the Charter of the United Nations reaffirms faith in fundamental human rights, in the dignity and worth of the human person and in the equal rights of men and women,

Noting that the Universal Declaration of Human Rights affirms the principle of the inadmissibility of discrimination and proclaims that all human beings are born free and equal in dignity and rights and that everyone is entitled to all the rights and freedoms set forth therein, without distinction of any kind, including distinction based on sex,

Noting that the States Parties to the International Covenants on Human Rights have the obligation to ensure the equal rights of men and women to enjoy all economic, social, cultural, civil and political rights,

Considering the international conventions concluded under the auspices of the United Nations and the specialized agencies promoting equality of rights of men and women,

Noting also the resolutions, declarations and recommendations adopted by the United Nations and the specialized agencies promoting equality of rights of men and women,

Concerned, however, that despite these various instruments extensive discrimination against women continues to exist,

Recalling that discrimination against women violates the principles of equality of rights and respect for human dignity, is an obstacle to the participation of women, on equal terms with men, in the political, social, economic and cultural life of their countries, hampers the growth of the prosperity of society and the family and makes more difficult the full development of the potentialities of women in the service of their countries and of humanity,

Concerned that in situations of poverty women have the least access to food, health, education, training and opportunities for employment and other needs,

Convinced that the establishment of the new international economic order based on equity and justice will contribute significantly towards the promotion of equality between men and women,

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<sup>330</sup> UN Women, CEDAW Treaty (1979)

<<http://www.un.org/womenwatch/daw/cedaw/text/econvention.htm>> (Accessed 1/08/2016).

Emphasizing that the eradication of apartheid, all forms of racism, racial discrimination, colonialism, neo-colonialism, aggression, foreign occupation and domination and interference in the internal affairs of States is essential to the full enjoyment of the rights of men and women,

Affirming that the strengthening of international peace and security, the relaxation of international tension, mutual co-operation among all States irrespective of their social and economic systems, general and complete disarmament, in particular nuclear disarmament under strict and effective international control, the affirmation of the principles of justice, equality and mutual benefit in relations among countries and the realization of the right of peoples under alien and colonial domination and foreign occupation to self-determination and independence, as well as respect for national sovereignty and territorial integrity, will promote social progress and development and as a consequence will contribute to the attainment of full equality between men and women,

Convinced that the full and complete development of a country, the welfare of the world and the cause of peace require the maximum participation of women on equal terms with men in all fields,

Bearing in mind the great contribution of women to the welfare of the family and to the development of society, so far not fully recognized, the social significance of maternity and the role of both parents in the family and in the upbringing of children, and aware that the role of women in procreation should not be a basis for discrimination but that the upbringing of children requires a sharing of responsibility between men and women and society as a whole,

Aware that a change in the traditional role of men as well as the role of women in society and in the family is needed to achieve full equality between men and women,

Determined to implement the principles set forth in the Declaration on the Elimination of Discrimination against Women and, for that purpose, to adopt the measures required for the elimination of such discrimination in all its forms and manifestations,

Have agreed on the following:

## **PART I**

### ***Article I***

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, civil 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 their national constitutions or other appropriate legislation if not yet incorporated therein and to ensure, through law and other appropriate means, the practical realization 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 person, organization 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.

## **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.

## **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.

**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.

**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.

**PART II**

**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.

**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.

**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.

### **PART III**

#### ***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 to ensure the health and well-being of families, including information and advice on family planning.

#### ***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.

#### **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 health care 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.

**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.

**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.

#### **PART IV**

##### ***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.

##### ***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 compulsory.

## **PART V**

### ***Article 17***

1. For the purpose of considering the progress made in the implementation of the present Convention, there shall be established a Committee on the Elimination of Discrimination against Women (hereinafter referred to as the Committee) consisting, at the time of entry into force of the Convention, of eighteen and, after ratification of or accession to the Convention by the thirty-fifth State Party, of twenty-three experts of high moral standing and competence in the field covered by the Convention. The experts shall be elected by States Parties from among their nationals and shall serve in their personal capacity, consideration being given to equitable geographical distribution and to the representation of the different forms of civilization as well as the principal legal systems.

2. The members of the Committee shall be elected by secret ballot from a list of persons nominated by States Parties. Each State Party may nominate one person from among its own nationals.

3. The initial election shall be held six months after the date of the entry into force of the present Convention. At least three months before the date of each election the Secretary-General of the United Nations shall address a letter to the States Parties inviting them to submit their nominations within two months. The Secretary-General shall prepare a list in alphabetical order of all persons thus nominated, indicating the States Parties which have nominated them, and shall submit it to the States Parties.

4. Elections of the members of the Committee shall be held at a meeting of States Parties convened by the Secretary-General at United Nations Headquarters. At that meeting, for which two thirds of the States Parties shall constitute a quorum, the persons elected to the Committee shall be those nominees who obtain the largest number of votes and an absolute majority of the votes of the representatives of States Parties present and voting.

5. The members of the Committee shall be elected for a term of four years. However, the terms of nine of the members elected at the first election shall expire at the end of two years; immediately after the first election the names of these nine members shall be chosen by lot by the Chairman of the Committee.

6. The election of the five additional members of the Committee shall be held in accordance with the provisions of paragraphs 2, 3 and 4 of this article, following the thirty-fifth ratification or accession. The terms of two of the additional members elected on this occasion shall expire at the end of two years, the names of these two members having been chosen by lot by the Chairman of the Committee.

7. For the filling of casual vacancies, the State Party whose expert has ceased to function as a member of the Committee shall appoint another expert from among its nationals, subject to the approval of the Committee.

8. The members of the Committee shall, with the approval of the General Assembly, receive emoluments from United Nations resources on such terms and conditions as the Assembly may decide, having regard to the importance of the Committee's responsibilities.

9. The Secretary-General of the United Nations shall provide the necessary staff and facilities for the effective performance of the functions of the Committee under the present Convention.

#### **Article 18**

1. States Parties undertake to submit to the Secretary-General of the United Nations, for consideration by the Committee, a report on the legislative, judicial, administrative or other measures which they have adopted to give effect to the provisions of the present Convention and on the progress made in this respect:

(a) Within one year after the entry into force for the State concerned;

(b) Thereafter at least every four years and further whenever the Committee so requests.

2. Reports may indicate factors and difficulties affecting the degree of fulfilment of obligations under the present Convention.

#### **Article 19**

1. The Committee shall adopt its own rules of procedure.

2. The Committee shall elect its officers for a term of two years.

#### **Article 20**

1. The Committee shall normally meet for a period of not more than two weeks annually in order to consider the reports submitted in accordance with article 18 of the present Convention.

2. The meetings of the Committee shall normally be held at United Nations Headquarters or at any other convenient place as determined by the Committee.

**Article 21**

1. The Committee shall, through the Economic and Social Council, report annually to the General Assembly of the United Nations on its activities and may make suggestions and general recommendations based on the examination of reports and information received from the States Parties. Such suggestions and general recommendations shall be included in the report of the Committee together with comments, if any, from States Parties.

2. The Secretary-General of the United Nations shall transmit the reports of the Committee to the Commission on the Status of Women for its information.

**Article 22**

The specialized agencies shall be entitled to be represented at the consideration of the implementation of such provisions of the present Convention as fall within the scope of their activities. The Committee may invite the specialized agencies to submit reports on the implementation of the Convention in areas falling within the scope of their activities.

**PART VI**

**Article 23**

Nothing in the present Convention shall affect any provisions that are more conducive to the achievement of equality between men and women which may be contained:

(a) In the legislation of a State Party; or

(b) In any other international convention, treaty or agreement in force for that State.

**Article 24**

States Parties undertake to adopt all necessary measures at the national level aimed at achieving the full realization of the rights recognized in the present Convention.

**Article 25**

1. The present Convention shall be open for signature by all States.

2. The Secretary-General of the United Nations is designated as the depositary of the present Convention.

3. The present Convention is subject to ratification. Instruments of ratification shall be deposited with the Secretary-General of the United Nations.

4. The present Convention shall be open to accession by all States. Accession shall be effected by the deposit of an instrument of accession with the Secretary-General of the United Nations.

**Article 26**

1. A request for the revision of the present Convention may be made at any time by any State Party by means of a notification in writing addressed to the Secretary-General of the United Nations.

2. The General Assembly of the United Nations shall decide upon the steps, if any, to be taken in respect of such a request.

**Article 27**

1. The present Convention shall enter into force on the thirtieth day after the date of deposit with the Secretary-General of the United Nations of the twentieth instrument of ratification or accession.

2. For each State ratifying the present Convention or acceding to it after the deposit of the twentieth instrument of ratification or accession, the Convention shall enter into force on the thirtieth day after the date of the deposit of its own instrument of ratification or accession.

**Article 28**

1. The Secretary-General of the United Nations shall receive and circulate to all States the text of reservations made by States at the time of ratification or accession.

2. A reservation incompatible with the object and purpose of the present Convention shall not be permitted.

3. Reservations may be withdrawn at any time by notification to this effect addressed to the Secretary-General of the United Nations, who shall then inform all States thereof. Such notification shall take effect on the date on which it is received.

**Article 29**

1. Any dispute between two or more States Parties concerning the interpretation or application of the present Convention which is not settled by negotiation shall, at the request of one of them, be submitted to arbitration. If within six months from the date of the request for arbitration the parties are unable to agree on the organization of the arbitration, any one of those parties may refer the dispute to the International Court of Justice by request in conformity with the Statute of the Court.

2. Each State Party may at the time of signature or ratification of the present Convention or accession thereto declare that it does not consider itself bound by paragraph 1 of this article. The other States Parties shall not be bound by that paragraph with respect to any State Party which has made such a reservation.

3. Any State Party which has made a reservation in accordance with paragraph 2 of this article may at any time withdraw that reservation by notification to the Secretary-General of the United Nations.

**Article 30**

The present Convention, the Arabic, Chinese, English, French, Russian and Spanish texts of which are equally authentic, shall be deposited with the Secretary-General of the United Nations.

IN WITNESS WHEREOF the undersigned, duly authorized, have signed the present Convention.

**APPENDIX 2:**

**CEDAW LEGISLATIVE COMPLIANCE INDICATORS**

CEDAW ARTICLE	LEGISLATIVE COMPLIANCE INDICATOR	SAMOA'S LEGISLATIVE PROVISIONS RE CEDAW	COMMENTS ON LEGISLATIVE COMPLIANCE <sup>331</sup>
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? These rights and freedoms include:</p> <ul style="list-style-type: none"> <li>a) the right to life;</li> <li>b) the right not to be subject to torture or to cruel, inhuman or degrading treatment or punishment;</li> <li>c) the right to equal protection according to humanitarian norms in time of international or internal armed conflict;</li> <li>d) the right to liberty and security of</li> </ul>	<p><b><u>Constitution 1960</u></b></p> <ul style="list-style-type: none"> <li>• Article 5 - Right to life,</li> <li>• Article 6 - Right to personal liberty,</li> <li>• Article 7 - Freedom from inhumane treatment,</li> <li>• Article 8 - Freedom from forced labour,</li> <li>• Article 9 - Right to a fair trial,</li> <li>• Article 10 - Rights concerning criminal law,</li> <li>• Article 11 - Freedom of religion</li> <li>• Article 12 - Rights concerning religious instructions,</li> <li>• Article 13 - Rights regarding freedom of speech, assembly, association, movement and residence,</li> <li>• Article 14 - Rights regarding property,</li> <li>• Article 15 - Freedom from discriminatory legislation and right to equality</li> </ul> <p><b><u>Public Service Act 2004</u></b></p> <ul style="list-style-type: none"> <li>• Section 18(2)(e) - reasonable remuneration and</li> </ul>	<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 of the Constitution combined with other rights to life, liberty and freedom from inhumane treatment.</p>

<sup>331</sup> There may be partial compliance even where no legislative measures are in place, if there are non-legislative measures that achieve substantially the same outcome.



	<p>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"> <li>• Section 18(2)(h) - provision of a safe environment to work in.</li> </ul>	
Art. 2	1.1 Is there a constitutional guarantee of substantive equality between men and women?	<p><b><u>Constitution 1960</u></b></p> <ul style="list-style-type: none"> <li>• Fundamental rights are guaranteed to every person under the Constitution (see above).</li> <li>• Article 15(1) of the Constitution provides that all persons are equal before the law and entitled to equal protection under the law.</li> <li>• Article 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.</li> </ul>	<p>Yes</p> <p>Article 15 of the Constitution guarantees 'equality before the law' and 'equal protection under the law'.</p>
Art. 2	2.2 Does the State party's constitution codify the <i>principles of equality</i> of men and women and non-discrimination?	<p><b><u>Constitution 1960</u></b></p> <ul style="list-style-type: none"> <li>• Article 15 (see above).</li> </ul>	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	<p><b><u>Constitution 1960</u></b></p> <ul style="list-style-type: none"> <li>• Article 4 guarantees that rights are enforceable.</li> <li>• Article 15 of the Constitution is supreme law, and has overriding status.</li> </ul>	<p>Partial</p> <p>See notes under Article 5 and 2.7.</p>

	government is decentralised?		
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?	<p>In recent years, Samoa has implemented the following legislative changes, among others:</p> <p><b><u>Constitution 1960</u></b></p> <ul style="list-style-type: none"> <li>• Article 441A - 10% Quota ensuring parliamentary seats for women;</li> <li>• Gender neutral language in all legislation;</li> </ul> <p><b><u>Crimes Act 2013</u></b></p> <ul style="list-style-type: none"> <li>• Section 52(1) - Broadening the definition of rape</li> </ul> <p><b><u>Family Safety Act 2013</u></b></p> <ul style="list-style-type: none"> <li>• Section 4 - Providing for the issuance of Protection Orders for victims of domestic violence irrespective of marital status</li> </ul> <p><b><u>Divorce and Matrimonial Causes Ordinance 1961</u></b></p> <ul style="list-style-type: none"> <li>• Sections 26A - 26D - c.f. section 4 <i>Family Safety Act 2013</i> above.</li> <li>• 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.</li> </ul>	<p>Partial (ongoing)</p> <p>Changes to laws that enable customary practices such as <i>ifoga</i> to reduce the sentence of an offender (including in relation to sexual violence) should be considered. Also, the solicitation and prostitution provisions under the <i>Crimes Act 2013</i> are not gender-neutral. Nonetheless, there has been continuous progressive elimination of discriminatory laws.</p>
Art. 2	2.5 Does the breadth of the State party's anti-discrimination provisions encompass direct and indirect discrimination against women?	<p><b><u>Constitution 1960</u></b></p> <ul style="list-style-type: none"> <li>• Article 15(2) - Except as expressly authorised under provisions of this Constitution, no law and no executive or administrative action of the State shall,</li> </ul>	Yes

		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..." The use of the phrase 'either expressly or in its practical application' captures indirect discrimination.	
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.	<p><b><u>Constitution 1960</u></b></p> <ul style="list-style-type: none"> <li>Article 15 - 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). This gives some legal recognition to intersecting forms of discrimination.</li> </ul>	<p>Partial</p> <p>There is no specific prohibition on discrimination on the grounds of disability, health status, sexual orientation or gender identity.</p>
Art. 2	2.7 Does the State party's anti-discrimination legislation protect women against discrimination by public authorities and institutions, as well as private actors?	<p><b><u>Constitution 1960</u></b></p> <ul style="list-style-type: none"> <li>Article 15 - protects women against discrimination by public authorities.</li> </ul> <p><b><u>Ombudsman (Komesina o Sulufaiga) Act 2013</u></b></p> <ul style="list-style-type: none"> <li>The Act also protects against discriminatory action. 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.</li> </ul> <p><b><u>Labour and Employment Relations Act 2013</u></b></p> <ul style="list-style-type: none"> <li>Section 19 - prohibits sex discrimination in private</li> </ul>	<p>Partial</p> <p>There is currently no ability to take specific action against private actors outside of the employment context.</p>

		<p>employment:</p> <ul style="list-style-type: none"> <li>- 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).</li> </ul>	
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?	<p><b><u>Constitution 1960</u></b></p> <ul style="list-style-type: none"> <li>• Article 4 and 15 - 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.</li> </ul> <p><b><u>Ombudsman Act 2013</u></b></p> <ul style="list-style-type: none"> <li>• Sections 18 and 28 - 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 decision was unreasonable, unjust, oppressive, or discriminatory. The Ombudsman may start investigation after receipt of a complaint, even if the complaint is not against any administrative decision.</li> </ul>	<p>Partial</p> <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 [2010] WSCA 4</i>, 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 systemic abuse of human rights, and thus the subject of an Ombudsman Office inquiry under Part 4 of the <i>Ombudsman Act 2013</i>).</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"> <li>a) monetary compensation</li> <li>b) restitution</li> <li>c) rehabilitation</li> <li>d) reinstatement</li> <li>e) satisfaction (for example, public apologies and guarantees of non-repetition)</li> <li>f) changes in relevant laws and practices</li> </ul>	<p><b><u>Constitution 1960</u></b></p> <ul style="list-style-type: none"> <li>• Article 4 - 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".</li> </ul> <p><b><u>Ombudsman Act 2013</u></b></p> <ul style="list-style-type: none"> <li>• Section 28(2) - The Ombudsman after investigation finding in favor of the complainant, would report the opinion and reasons to the appropriate Ministry or organization and make recommendation if: <ul style="list-style-type: none"> <li>- the matter should be referred to the appropriate authority for further consideration; or</li> <li>- the omission should be rectified; or</li> <li>- the decision should be cancelled or varied; or</li> <li>- any practice on which the decision, recommendation, act, or omission was based should be altered; or</li> <li>- any law on which the decision, recommendation, act, or omission was based should be reconsidered; or</li> <li>- reasons should have been given for the decision; or</li> <li>- any other steps should be taken.</li> </ul> </li> <li>• Part IV of the <i>Ombudsman Act 2013</i>, the Ombudsman (through the NHRI) may recommend changes in relevant laws in order to promote</li> </ul>	<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 <i>Ombudsman Ordinance</i>), there is no direct ability to get compensation for discrimination.</p>
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		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).	
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?	<p><b><u>Family Safety Act 2013</u></b></p> <ul style="list-style-type: none"> <li>• An Act to provide for greater protection of families and the handling of domestic violence and related matters.</li> <li>• 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. (See 2.11 below, for information).</li> </ul> <p><b><u>Criminal Procedure Act 2016</u></b></p> <ul style="list-style-type: none"> <li>• Section 30(1)(b) <ul style="list-style-type: none"> <li>- Gives Police the power to enter premises without a warrant to arrest and offender or prevent an offence likely to cause immediate harm or serious injury to another person for example, domestic violence.</li> </ul> </li> </ul>	Yes  However continuous education and training is necessary to ensure that legislative mechanisms in place are effective.
Art. 2	2.11 Does the State party obligate law enforcement officials to act with due diligence to prevent, investigate or respond to domestic violence, and to provide adequate sanctions for the officials failure to do so?	<p><b><u>Family Safety Act 2013</u></b></p> <ul style="list-style-type: none"> <li>• Section 16 - Duties of law enforcement officials: <ul style="list-style-type: none"> <li>- In instances of domestic violence where physical or sexual abuse is involved, the Police Officer is obligated to do all things necessary to ensure that a charge or information is laid with the Court to</li> </ul> </li> </ul>	Yes

		<p>commence prosecution of the matter in Court and not withdraw the charge or information accordingly</p> <ul style="list-style-type: none"> <li>- 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.</li> <li>• Sanctions for failure of officials: <ul style="list-style-type: none"> <li>- 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.</li> </ul> </li> </ul>	
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?	<p><b><u>Family Safety Act 2013</u></b></p> <ul style="list-style-type: none"> <li>• Section 4(6) - Allows applications for protection orders to be made at any time outside of court hours, allowing timely remedies where necessary. There is no cost for applications under that act</li> </ul> <p><b><u>Constitution 1960</u></b></p>	Yes

		<ul style="list-style-type: none"> <li>Article 9(4)(c) - There is no specific legal aid legislation in Samoa, however, the right to a fair trial under the Article requires legal aid where necessary, and this is granted by the court on an <i>ad hoc</i> basis.</li> </ul>	
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?	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?	<p><b><u>Constitution 1960</u></b></p> <ul style="list-style-type: none"> <li>Article 9(1) - 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.</li> </ul> <p><b><u>Family Court Act 2014</u></b></p> <ul style="list-style-type: none"> <li>Creates a new specialised Family court to hear disputes in this area in relation to domestic violence issues.</li> </ul>	Yes
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?	<p><b><u>Family Safety Act 2013</u></b></p> <ul style="list-style-type: none"> <li>Section 16 - 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.</li> </ul>	Yes  The <i>Family Safety Act 2013</i> deals with domestic violence which is widely defined.



	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?	<p><b><u>Family Safety Act 2013</u></b></p> <ul style="list-style-type: none"> <li>Allows interim protection orders to ensure safety can be guaranteed in a timely manner.</li> </ul> <p>No specific legislation mandating vigilant and speedy prosecution of perpetrators of domestic violence.</p>	<p>Yes</p> <p>Vigilant and speedy prosecution is carried out although not mandated in legislation.</p>
Art. 2	2.17 Do domestic courts apply the law consistent with the State party's obligations under CEDAW?	N/A (non-legislative).	<p>N/A</p> <p>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>.</p>
Art. 2	2.18 When deciding custody and visitation, do domestic courts take into account instances of violence, ensuring that the rights and safety of the victim and children are not jeopardized?	<p><b><u>Infants Ordinance 1961</u></b></p> <ul style="list-style-type: none"> <li>Section 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.</li> </ul>	Yes
Art. 2	2.19 Are protective orders available to women in situations of violence, regardless of marital status, that: <ul style="list-style-type: none"> <li>a) ease the burden of proof in favour of the victim?</li> <li>b) do not place undue administrative and legal burdens on the applicant?</li> </ul>	<p><b><u>Family Safety Act 2013</u></b></p> <ul style="list-style-type: none"> <li>Section 4 - 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.</li> </ul>	Yes

		<ul style="list-style-type: none"> <li>• Section 5 - Interim protection orders can be granted if there is 'sufficient evidence'.</li> <li>• Section 7 - Defended applications for protection orders will be granted if domestic violence is shown on the 'balance of probabilities'.</li> </ul>	
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 cases of sexual offences and violence against women, and not affected by prejudices or stereotypical gender notions]?	N/a (non-legislative).	N/A
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?	N/A (non-legislative).	N/A  There is poor collaboration from certain stakeholders such as Health. Collaborative efforts among all key stakeholders (governmental and non-governmental) must be progressive.
Art. 2	2.22 Has the State party: 1) Reviewed the definition of rape in the legislation so as to place the lack of	<b><u>Crimes Act 2013</u></b> <ul style="list-style-type: none"> <li>• Section 49(2) - Rape is when a male has sexual intercourse with a female <i>without her consent freely</i></li> </ul>	Yes.  Section 51(3) of the <i>Crimes Act</i>

	<p>consent at its centre?</p> <p>2) 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?</p> <p>3) Minimized the secondary victimization of the complainant/survivor in proceedings by enacting a definition of sexual assault that either:</p> <ul style="list-style-type: none"> <li>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</li> <li>ii) Requires that the act take place in “coercive circumstances” and includes a broad range of coercive circumstances?</li> </ul>	<p><i>and voluntarily given.</i></p> <ul style="list-style-type: none"> <li>• Section 51(1) - The <i>Crimes Act 2013</i> provides for a broad range of coercive circumstances. Section 51 (1) provides for circumstances which do not in themselves amount to consent such as: <ul style="list-style-type: none"> <li>i. Consent extorted by fear or bodily harm or threats,</li> <li>ii. Personating the victim’s spouse or partner</li> <li>iii. False representation as to the nature and quality of the act</li> <li>iv. person is asleep or unconscious</li> <li>v. person is under the influence of alcohol or drugs to the extent that he or she does not have the capacity to consent</li> <li>vi. intellectual, mental or physical condition of such a nature or degree.</li> </ul> </li> <li>• 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.</li> </ul> <p><b><u>Evidence Act 2015</u></b></p>	<p><i>2013</i> provides a defence to rape if the accused honestly and reasonably believes that consent was given.</p> <p>Section 54 of the <i>Crimes Act 2013</i> requires the accused to know that consent was induced by threat in order for the conduct to be an offence.</p> <p>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.</p>
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		<ul style="list-style-type: none"> <li>• Section 98 – states that corroboration is not necessary except in cases of perjury or treason.</li> </ul>	
Art. 3	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><b><u>Ombudman (Komesina o Sulufaiga) Act 2013</u></b></p> <ul style="list-style-type: none"> <li>• Section 33 - gives the Ombudsman Office particular functions regarding human rights, including promoting awareness of human rights and efforts to combat discrimination. The mandate specifically includes reference to CEDAW (Schedule 1).</li> </ul> <p><b><u>Ministry of Women’s Affairs Act 1990</u></b></p> <ul style="list-style-type: none"> <li>• 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.</li> <li>• Section 12 - the Minister of the MWCSA who is also the Chairman of WAC is responsible for implementing government policy in relation to the advancement of women.</li> <li>• Section 16A - further creates a role of <i>Sui Tama’ita’i o le Nu’u</i> as a female representative of each village.</li> </ul>	Yes
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?	<p><b><u>Constitutional Amendment Act 2013</u></b></p> <ul style="list-style-type: none"> <li>• Establishes a quota system for representation of women in Parliament.</li> </ul>	<p>Partial</p> <p>The CEDAW Committee recommends that more temporary special measures are taken, particularly in areas of</p>

			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?	<p><b><u>Constitution 1960</u></b></p> <ul style="list-style-type: none"> <li>Article 15(3) - exempts measures that make provision for the protection or advancement of women.</li> </ul>	Yes
Art. 5	5.1 Is there a provision in the Constitution, or otherwise codified 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?	<p><b><u>Constitution 1960</u></b></p> <ul style="list-style-type: none"> <li>Article 15. The Constitutional guarantee of equality and non-discrimination is supreme law, but allows for some existing laws (including custom and usage that has acquired the force of law) to continue.</li> </ul>	Yes
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?	N/A	<p>Partial</p> <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</p>

			<p>include:</p> <p>The statutory functions of MWCS D under the <i>Ministry of Women’s Affairs Act</i>, which focusses on the home-based roles of women;</p> <p>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 women as child-carers;</p> <p>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.</p>
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Art. 6	6.1 Has the State party criminalized the trafficking and the sexual exploitation of women?	<p><b><u>Crimes Act 2013</u></b></p> <ul style="list-style-type: none"> <li>• Trafficking: <ul style="list-style-type: none"> <li>- Section 154 - smuggling of migrants,<sup>332</sup></li> <li>- Section 155 - by means of coercion or deception,<sup>333</sup></li> <li>- Section 156 - aggravating factors for the purpose of sentencing,<sup>334</sup> and</li> <li>- Section 157 - people under the age of 18.<sup>335</sup></li> </ul> </li> <li>• Sexual Exploitation: <ul style="list-style-type: none"> <li>- Section 74 - forbids living on the earnings of the prostitution of another person.</li> <li>- Section 75 - prohibits the procurement of any woman or girl to have sexual intercourse with any male who is not her husband.</li> <li>- Section 157 criminalises the buyer by prohibiting any dealing of any person under the age of 18 for sexual exploitation.</li> </ul> </li> </ul>	<p>Yes</p> <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>
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	N/A (non-legislative)	N/A

<sup>332</sup>Crimes Act 2013 (Samoa) s 154.

<sup>333</sup>Crimes Act 2013 (Samoa) s 155.

<sup>334</sup>Crimes Act 2013 (Samoa) s 156.

<sup>335</sup>Crimes Act 2013 (Samoa) s 157.

	and refugees?		
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?	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 coming from conflict areas are not subject to trafficking?	N/A (non-legislative)	N/A
Art. 6	6.5 Has the State party adopted bilateral or regional agreements to facilitate the prosecution of perpetrators trafficking in women?	N/A (non-legislative)	N/A
Art. 7	7.1 Is there an equal right between men and women to vote?	<b><u>Electoral Act 1963</u></b> <ul style="list-style-type: none"> <li>Sections 16 and 19 - 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.</li> </ul>	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	<b><u>Electoral Act 1963</u></b> <ul style="list-style-type: none"> <li>Section 5 - To be eligible a candidate must: <ul style="list-style-type: none"> <li>- be a Samoan citizen;</li> </ul> </li> </ul>	Partial  Despite the equal eligibility to run for elections, statistics show that



	the formulation of policy?	<ul style="list-style-type: none"> <li>- be a registered elector of a constituency; and</li> <li>- hold a <i>matai</i> title.</li> </ul>	11% of <i>matai</i> title holders are women. Furthermore, there are 7 villages that do not allow women to hold <i>matai</i> titles. In addition, many women <i>matai</i> 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 advance equality and women's participation in this field?	<p><b><u>Constitutional Amendment Act 2013</u></b></p> <ul style="list-style-type: none"> <li>• Established a gender quota system, which introduces reserved seats for 10% of the National Assembly, for women. This will be implemented for the first time in the 2016 elections.</li> </ul>	<p>Yes</p> <p>Note: still falls short of the CEDAW target of 30% to ensure sufficient female representation in national decision-making.</p>
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?	N/A. No legal barriers to participation.	<p>Yes</p> <p>There may still be a need for temporary special measures in this area (legislative or non-legislative) to accelerate the achievement of actual equality in representation.</p>

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?	No legal barriers to participation. Cabinet is responsible for appointing ambassadors.	Yes  There may still 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?	<b><u>Citizenship Act 2004</u></b> <ul style="list-style-type: none"> <li>• Governs rights of both women and men to acquire, change or retain their nationality.</li> </ul>	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.	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 children?	<b><u>Citizenship Act 2004</u></b> <ul style="list-style-type: none"> <li>• Section 6 - A person born in Samoa is a citizen by birth provided that at the time of his/her birth, at least one parent of the person is a Samoan citizen.</li> </ul>	Yes
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?	<b><u>Education Act 2009</u></b> <ul style="list-style-type: none"> <li>• Applies equally to boys and girls and provides for those who require extra assistance.</li> <li>• Section 58 - stipulates that schools must uphold the standard of the curriculum set by the Minister responsible for the MESC.</li> </ul>	Yes

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?	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?	No legal barriers.	Yes
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 physical education?	No legal barriers to participation.	Yes
Art. 10	10.5 Does the State party provide on an equal basis access to <i>educational information and advice on family planning</i> ?	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 MESCC, 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?	N/A	N/A

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?	<p><b><u>Public Service Act 2004</u></b></p> <ul style="list-style-type: none"> <li>• Regulates the employment process in the public sector.</li> <li>• 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"> <li>• appointing and promoting employees on the basis of merit,<sup>336</sup></li> <li>• a reasonable opportunity to apply for employment in the public service,<sup>337</sup></li> <li>• equal employment opportunity in the public service,<sup>338</sup></li> <li>• provision of a safe environment to work in,<sup>339</sup></li> <li>• access to training and development,<sup>340</sup> and</li> <li>• reasonable remuneration and working conditions.<sup>341</sup></li> </ul> </li> </ul> <p><b><u>Labour and Employment Relations Act 2013</u></b></p> <ul style="list-style-type: none"> <li>• Sections 19 and 20 - provides for the employment process in the private sector. It embodies the principles of non-discrimination in employment.</li> </ul>	Yes
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<sup>336</sup> *Public Service Act 2004 (Samoa) s 18(2)(a).*

<sup>337</sup> *Public Service Act 2004 (Samoa) s 18(2)(f).*

<sup>338</sup> *Public Service Act 2004 (Samoa) s 18(2)(g).*

<sup>339</sup> *Public Service Act 2004 (Samoa) s 18(2)(h).*

<sup>340</sup> *Public Service Act 2004 (Samoa) s 18(2)(d).*

<sup>341</sup> *Public Service Act 2004 (Samoa) s 18(2)(e).*

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?		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?	<p><b><u>Labour and Employment Relations Act 2013</u></b></p> <ul style="list-style-type: none"> <li>• Section 57(2) - 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.</li> <li>• Section 57(3) - In the event that it should take place, the employer is legally obligated to pay any earned wages pertaining to that employee.</li> </ul> <p><b><u>Public Service Act 2004</u></b></p> <ul style="list-style-type: none"> <li>• Section 18(2)(h) - requires employers to provide a safe working environment</li> <li>• Section 18(2)(c) – requires employers to provide employees with access to a simple and fair grievance system. The system is provided in the PSC Discipline Manual.</li> </ul>	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. Furthermore there are no sexual harassment policies in public service organisations that may achieve the same results as legislation.
Art. 11	11.4 Does legislation of the State party guarantees equal remuneration for men and women, including benefits, for work of equal value?	<p><b><u>Labour and Employment Relations Act 2013</u></b></p> <ul style="list-style-type: none"> <li>• Section 19 - requires employers to provide equal remuneration for similar work</li> <li>• Section 20(4) – requires employers to provide equal</li> </ul>	Yes

		pay for work of equal value.	
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?	<p><b><u>The Accident Compensation Act 1989</u></b></p> <ul style="list-style-type: none"> <li>• Section 2 - 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.</li> <li>• Section 53 - 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.</li> <li>• There is no compensation or benefit available for injury that arises from any other cause outside of the course of employment.</li> </ul>	<p>Yes</p> <p>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.</p>
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?	<p><b><u>Labour and Employment Relations Act 2013</u></b></p> <ul style="list-style-type: none"> <li>• Section 45(3) - states that females returning to work after taking maternity leave are entitled to resume their position at the same rate of pay.</li> <li>• Section 45(4) - states that females are entitled to one break a day or a reduction in working hours to breastfeed or provide milk for their child.</li> </ul>	<p>Yes</p>

Art. 11	11.7 Does legislation of the State party provide women with paid maternity leave or with comparable social benefits?	<p><b><u>Labour and Employment Relations Act 2013.</u></b></p> <ul style="list-style-type: none"> <li>• Section 43 - states that an employee is eligible for a period of paid maternity leave.</li> <li>• Section 44 - 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. However, this is only available to employees who have worked continuously for 12 months or more with the same employer (s 43(3)(b)).</li> </ul> <p><b><u>Public Service Working Conditions and Entitlement Manual</u></b></p> <ul style="list-style-type: none"> <li>• 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.</li> </ul>	<p>Partial</p> <p>CEDAW Committee recommends 14 weeks paid maternity leave.</p>
Art. 11	11.8 Does legislation of the State party guarantee women's protection from dismissal from employment because of pregnancy or maternity leave?	<p><b><u>Labour and Employment Relations Act 2013</u></b></p> <ul style="list-style-type: none"> <li>• Section 45 – the section 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)).</li> </ul>	<p>Partial</p> <p>There is no specific legislative protection in the <i>Public Service Act 2004</i>.</p>

Art. 11	11.9 Does the State party promote the establishment and development of childcare facilities?	<p><b><u>Cabinet Directive 2011 Issue No, 34</u></b></p> <ul style="list-style-type: none"> <li>• Directs that 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 new-borns should the need arise.</li> </ul>	<p>Partial</p> <p>This requirement in relation to government Ministries is only in a <i>Cabinet Directive</i>, 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 (maybe non-legislative)</p>
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?	<p><b><u>Labour and Employment Relations Act 2013</u></b></p> <ul style="list-style-type: none"> <li>• Section 58 - a non-citizen of Samoa must first obtain an employment permit before undertaking employment in Samoa.</li> <li>• Preamble(b) - foreign employees are guaranteed equal rights and protection as national employees.</li> </ul>	Yes
Art. 12	12.1 Do women have equal access to healthcare services, including those related to family planning?	No legal barriers present.	Yes
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?	N/A (non-legislative)	N/A



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?	N/A (non-legislative)	N/A  Neither the Ministry of Health nor National Health Services have policies in place to deal with domestic violence or sexual violence matters that come before them, which (together with training) is necessary for health professionals to ensure they deal with such situations appropriately and effectively.
Art. 13	13.1 Do women have an equal right to family benefits, regardless of marital status?	<b><u>Constitution 1960</u></b> • Section 15(3) - no person shall be subject to any restriction or confer on any person any privilege on the ground of family status.	Yes
Art. 13	13.2 Do women have an equal right to receive bank loans, mortgages and financial credit?	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?	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?	<b><u>Ministry of Women's Affairs Act 1990</u></b> • Section 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	Yes

		<p>and local Governance bodies.</p> <ul style="list-style-type: none"> <li>• Section 16B - The duties of the <i>Sui Tama'ita'i o le Nu'u</i> includes: <ul style="list-style-type: none"> <li>- Promoting the advancement of women in her village;</li> <li>- 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);</li> <li>- Collaborating closely with the Village Women's Committee and <i>Sui of le Nu'u</i> on promoting wellbeing and health of the village;</li> <li>- Promoting good governance in women's committees and other women's groups;</li> <li>- Performing duties that promote and support government policy related to the work on the advancement of women in the village.</li> </ul> </li> </ul>	
Art. 15	15.1 Does the State party's constitution accord women equality with men before the law?	<p><b><u>Constitution 1960</u></b></p> <ul style="list-style-type: none"> <li>• Article 15(1) - provides that all persons are equal before the law and entitled to equal protection under the law.</li> </ul>	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	No legal barrier to women's legal capacity in criminal and civil matters mentioned.	Yes

	and bring litigation?		
Art. 15	15.3 Is there legislation that nullifies contracts and instruments that limit women's legal capacity?	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?	<b><u>Constitution 1960</u></b> <ul style="list-style-type: none"> <li>Article 13 - provides for the right of all persons to move freely throughout Samoa.</li> </ul>	Yes
Art. 15	15.5 Do migrant women living and working temporarily in the State have the same rights as men to have their spouses, partners and children join them?	No legal barrier to these rights.	Yes
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?	<b><u>Divorce and Matrimonial Causes Ordinance 1961</u></b> <ul style="list-style-type: none"> <li>Section 9(2) - 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.</li> </ul>	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?	<b><u>Divorce and Matrimonial Causes Ordinance 1961</u></b> <ul style="list-style-type: none"> <li>Generally broad and gender-neutral provisions regarding responsibilities at dissolution of marriage.</li> </ul>	Yes
Art. 16	16.3 Does legislation of the State party afford women an equal right as men to choose a family name?	No legal barrier to equal right to choose a family name.  <b><u>Births, Deaths and Marriages Registration Act 2002</u></b> <ul style="list-style-type: none"> <li>Section 24 and 68 - allows any adult to change their</li> </ul>	Yes

		name upon marriage.	
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?		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?	<b><u>Divorce and Matrimonial Causes Ordinance 1961</u></b> <ul style="list-style-type: none"> <li>• Section 7(3) - state that a marriage may be broken down irretrievably if the court is satisfied that a party to the marriage is the subject of domestic violence.</li> </ul>	Yes
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?	<b><u>Divorce and Matrimonial Causes Ordinance 1961</u></b> <ul style="list-style-type: none"> <li>• Sections 22B and 22C - allows 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.</li> </ul>	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	<b><u>Infants Ordinance 1961</u></b> <ul style="list-style-type: none"> <li>• Section 3 - Where the issue of the custody or upbringing of a child shall be determined by the</li> </ul>	Yes

	regardless of the relationship of the parents?	Court, the welfare of the child shall have first and paramount importance.	
Art. 16	16.8 Does the legislation afford protections and privileges for de facto relationships on the same basis as legal unions?	<b><u>Labour and Employment Relations Act 2013</u></b> <ul style="list-style-type: none"> <li>Section 46 - men in de facto relationships working are granted paternity leave equally to married men.</li> </ul>	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?	<b><u>Maintenance and Affiliation Act 1967</u></b> <ul style="list-style-type: none"> <li>Sections 12 - 14 - allows orders for maintenance payments to be made against a parent of a child. Parent includes the mother, and, if the child is legitimate, the father of the child.</li> <li>Sections 9 - 11 -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</li> </ul>	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?	<b><u>Infants Ordinance 1961</u></b> <ul style="list-style-type: none"> <li>Section 8 – applicant of adoption must be of good repute and a fit and proper person to have the care and custody, and sufficient ability to bring up, maintain and educate the infant.</li> </ul>	Partial  See above

Art. 16	16.11 Does legislation of the State party provide equal treatment of men and women with regard to inheritance?	<p><b><u>Administration Act 1975</u></b></p> <ul style="list-style-type: none"> <li>• Section 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.</li> </ul>	
Art. 16	16.12 Is there a legislative prohibition on child marriage?	<p><b><u>Marriage Ordinance 1961</u></b></p> <ul style="list-style-type: none"> <li>• Section 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.</li> <li>• However, under s 12 a marriage without a marriage officer is void.</li> </ul>	Yes
Art. 16	16.13 Does the State party' legislation set the minimum age for marriage at 18 for both men and women?	<p><b><u>Marriage Ordinance 1961</u></b></p> <ul style="list-style-type: none"> <li>• Section 9 - the minimum age for men to marry is 18 years, and for women 16 years.</li> </ul>	No  The proposed <i>Child Care and Protection Bill</i> currently being developed 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?	<p><b><u>Births, Deaths and Marriages Registration Act 2002</u></b></p> <ul style="list-style-type: none"> <li>• Section 55 - states that all marriages in Samoa must be registered on the register created under section 69 of the Act.</li> </ul>	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?	<p><b><u>Family Safety Act 2013</u></b></p> <ul style="list-style-type: none"> <li>Section 2 - stalking falls under the meaning of 'domestic violence'.</li> </ul> <p><b><u>Divorce and Matrimonial Causes Ordinance 1961</u></b></p> <ul style="list-style-type: none"> <li>Section 20 - also creates an offence of molestation of a divorced wife by her husband, which includes trespass, following, watching or besetting her dwelling house.</li> </ul>	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?	<p><b><u>Crimes Act 2013</u></b></p> <ul style="list-style-type: none"> <li>Sections 52 - 68 - contain a broad range of sexual offences.</li> </ul>	Yes
1 and 2	1.18 Is there an offence of incest in the penal code	<p><b><u>Crimes Act 2013</u></b></p> <ul style="list-style-type: none"> <li>Section 55 - creates an offence of incest.</li> <li>Section 56 - also creates an offence of sexual conduct with a dependent family member.</li> </ul>	Yes
1 and 2	1.20 Is consent specifically defined in the criminal law legislation outlining coercive circumstances?	<p><b><u>Crimes Act 2013</u></b></p> <ul style="list-style-type: none"> <li>Section 51 - Circumstances which do not in themselves amount to consent</li> </ul> <p>(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</p>	Yes

		<p>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 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	Partial



1 and 2	1.22 Is there a legislative prohibition on requirement for corroboration	<p><b><u>Evidence Act 2015</u></b></p> <ul style="list-style-type: none"> <li>• Section 98 – corroboration is not necessary except in cases of perjury or treason</li> </ul>	Yes
1 and 2	1.23 Is there a legislative prohibition on a requirement to provide proof of resistance?	<p><b><u>Crimes Act 2013</u></b></p> <ul style="list-style-type: none"> <li>• Section 51(a) - states that it is not consent merely because the person does not protest or physically resist the sexual connection or other sexual activity.</li> </ul>	Yes
1 and 2	1.24 Is there a defence of honest and reasonable belief that the victim is of legal age? If there is no defence of honest and reasonable belief then there is full compliance with this indicator	<p><b><u>Crimes Act 2013</u></b></p> <ul style="list-style-type: none"> <li>• Section 58 - states that there is no defence of reasonable belief to the offence of sexual conduct with a child under 12.</li> <li>• Section 59 - However, in relation to the offence of sexual conduct with a young person under 16, there is a limited defence if the person charged proves on the balance of probabilities that: <ul style="list-style-type: none"> <li>(a) the person charged was under the age of 21 years at the time of the commission of the act; and</li> <li>(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</li> <li>(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</li> <li>(d) the young person consented (section 61).</li> </ul> </li> </ul>	Yes

1 and 2	1.25 Is a defence of consent unavailable in relation to a victim under 18?	<p><b><u>Crimes Act 2013</u></b></p> <ul style="list-style-type: none"> <li>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).</li> </ul>	<p>Partial</p> <p>The defence of consent is available in relation to young people aged 16 – 18, who are not dependent family members.</p>
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	<p>No exemption.</p> <p><b><u>Crimes Act 2013</u></b></p> <ul style="list-style-type: none"> <li>Section 29(4) - 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.</li> </ul>	<p>Yes</p>
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?	<p>No. It is still acknowledged in Courts today as a mitigating factor.</p> <p>See example: <i>Police v Moatoga</i> [2012] WSSC 61 and <i>Police v Lauvao</i> [2011] WSSC 75</p>	<p>No</p> <p>Changes to laws that enable customary practices such as <i>ifoga</i> to reduce the sentence of an offender (including in relation to sexual violence) should be made.</p>
1 and 2	1.32 Does the criminal law legislation allow for infanticide to replace a charge of murder or manslaughter?	<p><b><u>Crimes Act 2013</u></b></p> <ul style="list-style-type: none"> <li>Section 110 - requires a charge of infanticide to replace murder or manslaughter in relevant circumstances.</li> </ul>	<p>Yes</p>

10	10.6 Is there a legislative prohibition on expulsion from school because of pregnancy	No	No  However, a 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 HIV status with sanctions	<b><u>Labour and Employment Relations Act 2013</u></b> <ul style="list-style-type: none"> <li>• Section 19 - provides for the prohibition of sex discrimination in employment.</li> <li>• Section 20 (2) - provides that a person must not discriminate, directly or indirectly against an employee or an applicant for employment in any 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.</li> </ul>	Yes
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 the <i>Labour and Employment Relations Act 2013</i> .	Yes
16	16.6 Does the State party's legislation prohibit marital issues that may result in discrimination against women such as	<b><u>Crimes Act 2013</u></b> <ul style="list-style-type: none"> <li>• Section 78 - provides for the offence of bigamy</li> <li>• Section 79 - prohibits feigned marriages.</li> </ul>	Yes

	polygamy, bigamy, and bride price?		
16	16.10 Does the legislation provide for a maintenance and custody order during separation based on need?	<p><b><u>Divorce and Matrimonial Causes Ordinance 1961</u></b></p> <ul style="list-style-type: none"> <li>• Custody orders are provided for in the Act, section 24 (specifically including cases of judicial separation)</li> </ul> <p><b><u>Infants Ordinance 1961</u></b></p> <ul style="list-style-type: none"> <li>• Section 4 – see above</li> </ul> <p><b><u>Maintenance and Affiliation Act 1967</u></b></p> <ul style="list-style-type: none"> <li>• Section 12A – see above</li> </ul> <p><b><u>Infants Ordinance 1961</u></b></p> <ul style="list-style-type: none"> <li>• Section 3 - provides that in any proceeding involving the custody or upbringing of a child, the welfare of the child will be the first and paramount importance.</li> </ul>	Yes
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?	<p><b><u>Divorce and Matrimonial Causes Ordinance 1961</u></b></p> <ul style="list-style-type: none"> <li>• Sections 22B and 22C - 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.</li> </ul>	Yes
16	16.14 Is there a duty on the court to promote conciliation? If the legislation does not contain such a duty then there is full compliance with this indicator	<p><b><u>Family Court Act 2014</u></b></p> <ul style="list-style-type: none"> <li>• Section 6 - states that the Family Court must, so far as possible, promote conciliation.</li> <li>• Section 7 - requires parties to engage in alternative dispute resolution, unless the Court is satisfied that</li> </ul>	Partial  There is an obligation, but the Court has discretion to set the obligation aside in appropriate

		the circumstances are inappropriate	circumstances
16	16.16 Does the legislation provide for the payment of child support upon divorce based on need?	<p><b><u>Maintenance and Affiliation Act 1967</u></b></p> <ul style="list-style-type: none"> <li>• Section 12 - allows maintenance orders to be made in respect of children to ensure they are provided with adequate maintenance.</li> </ul> <p><b><u>Divorce and Matrimonial Causes Ordinance 1961</u></b></p> <ul style="list-style-type: none"> <li>• Section 24 - provides a general power to make maintenance payments in proceedings for divorce or separation as appears just to the Courts.</li> </ul> <p><b><u>Infants Ordinance 1961</u></b></p> <ul style="list-style-type: none"> <li>• Section 3 - provides that in any proceeding involving the custody or upbringing of a child, the welfare of the child will be the first and paramount importance.</li> </ul>	Yes
16	16.17 Does the legislation provide maintenance for woman based on commitments, income, earning capacity assets?	<p><b><u>Divorce and Matrimonial Causes Ordinance 1961</u></b></p> <ul style="list-style-type: none"> <li>• Section 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.</li> <li>• Section 22A - Orders relating to alimony and maintenance.</li> </ul>	Yes

		<p>(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"><li>(a) the age and state of health of the parties;</li><li>(b) the proper needs of each party to the marriage having regard to—<ul style="list-style-type: none"><li>(i) the age of the person; and</li><li>(ii) any special needs of the person; and</li></ul></li><li>(c) the income, earning capacity, property and financial resources of the person to be paid maintenance having regard to—<ul style="list-style-type: none"><li>(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</li><li>(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</li></ul></li><li>(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</li><li>(e) the commitments of each party to the marriage that are necessary to enable that party to</li></ul>	
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		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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