

Samoa



CEDAW Legislative Compliance Review

Legislative Compliance of Samoa

7.1 Overview

This Chapter examines and assesses Samoa's legislative compliance with CEDAW. Samoa ratified CEDAW on 25 September 1995 obliging it to work towards the modification of its constitution and legislation to accord with the articles of CEDAW. However, it is recognised that legislative compliance will be achieved through gradual and incremental change. The assessment of Samoa's compliance is based on the indicators identified in Chapter One and should be read in conjunction with the commentary on each indicator included in that Chapter. In sum, Samoa has achieved full compliance with 40 indicators of 113, partial compliance with 23 indicators and no compliance in relation to the remaining 50 indicators. The next section provides a brief synopsis of the findings of the review. Following the synopsis is a series of tables, each related to an article of CEDAW, and each containing the relevant indicators, the level of compliance achieved by Samoa (i.e. yes, no or partial compliance), the relevant legislation and finally where required, a brief commentary explaining how the legislation does or does not meet the indicator.

It should be noted that the Samoa legislative review was conducted using all materials available at the time, and that although every effort was made to obtain the most recent and up-to-date legal material, it is possible that there will be errors or omissions.

7.2 Synopsis of Findings

1. Article 1 (which defines discrimination) in conjunction with Article 2 requires States Parties to guarantee a range of fundamental rights and freedoms in their constitutions including substantive equality and freedom from discrimination on grounds of sex, marital status, sexual orientation, HIV status and disability. The Constitution of Samoa guarantees the rights and freedoms of citizens in most of the areas required by CEDAW. However, whilst the Constitution guarantees men and women equality before the law it does not guarantee equal benefits or outcomes as required by CEDAW nor does it guarantee the right to the highest standard of physical and mental health attainable. The Constitution of Samoa, in compliance with CEDAW, contains an anti-discrimination clause stating that no 'disability or restriction, privilege or advantage' based on sex shall be conferred on any person. Although family status (potentially including marital status) and sex are included as grounds for protection, there is no protection for women from discrimination on the grounds of sexual orientation, disability, or HIV status. Further, whilst public institutions are bound by the anti-discrimination provisions, there is no explicit extension to protect women from discrimination by any person, organisation or enterprise.
2. Articles 2 and 3 together mandate the establishment by legislation of national bodies and machinery to monitor the implementation of law and policy to foster the advancement of women. The establishment of a Ministry of Women's Affairs in Samoa through enabling legislation complies with the obligations created by CEDAW and represents a first in the Pacific region.
3. Article 2 condemns discrimination against women in all its forms and obligates States Parties to eliminate discrimination against women without delay. General Recommendation 19 issued by the CEDAW Committee makes

explicit that the definition of discrimination includes gender violence and recommends that ‘sanctions, penalties and compensation’ be introduced in relation to gender based violence. Sexual assault is a form of gender violence as it is overwhelmingly perpetrated against girls and women, and therefore must be prevented and remedied, as far as possible, through legislative means. Samoa has legislated against sexual assault providing adequate protection for the range of sexual violations perpetrated against girls and women in partial compliance with CEDAW. There are a range of sexual offences in the Samoan Penal Code that do not require penile penetration recognising the variety of ways in which girls and women can be violated. Although these offences are firstly treated less seriously than offences requiring penile penetration and secondly, offences against older girls are treated less seriously than against younger girls, the regime in the Samoan Penal Code is adequate. Moreover, the incorporation into the Penal Code of an offence against males who sexually violate any female under 21 under their care and protection appropriately recognises the power imbalance present in a familial context.

4. Incest is a gendered crime since it is primarily perpetrated against women and girls by men in the context of unequal power relations. Criminalising all parties to an incestuous sexual encounter is contrary to CEDAW and may dissuade a victim of an incestuous sexual assault from reporting it in fear of being charged with an offence. In Samoa, in non-compliance with CEDAW, incest *is* an offence for a girl aged over 16 years or above attracting a penalty of 7 years.
5. Three discriminatory common law rules have historically made it difficult for prosecutions against sexual assault offenders to succeed and are contrary to CEDAW. The admission of the prior sexual history of a victim in order to establish that she consented to the sexual act in question is a common law rule which perpetuates the myth that a victim’s previous sexual relationship with either the accused or others makes it more likely she consented. Corroboration (independent evidence such as that of a witness that connects the accused person with the crime) is a common law rule that requires a judge to advise the jury that it is dangerous to convict the accused on uncorroborated evidence. Proof of resistance is a common law rule which requires victims to establish that they physically resisted the perpetrator otherwise consent may be inferred. It is discriminatory because physical resistance may be an unrealistic expectation of a victim against a strong or armed perpetrator, and does not take into account how fear and power imbalances may immobilise the victim. Compliance with CEDAW requires that legislation prohibits the use of all three rules. In non-compliance with CEDAW, Samoa has *not* legislated against the use of prior sexual conduct the necessity for corroboration in sexual offence prosecutions or the requirement for proof of resistance by the victim.
6. Although there is generally no defence in sexual assault prosecutions in Samoa for the accused to claim that he did not know the girl was not of legal age, there is an exception in relation to a charge of sexual intercourse with a girl between the ages of 12 and 16 if the defendant is under 21. This places the onus on the minor to establish her age rather than the perpetrator to ascertain age and is non-compliant with CEDAW. Consent is available as a defence for girls over 16 which is not fully compliant with CEDAW which stipulates 18 as the age of adulthood.

7. Minimum sentences and mandatory prosecution ensure that sexual violence against women is treated seriously. Samoa, however, does not have mandatory prosecution or minimum sentences for sexual assault offences. In addition, the legislation specifically provides for customary law to affect criminal sentencing which may reduce a sentence further if there has been forgiveness. Bail, which should not be granted if there is any risk to a sexual assault victim, is at the discretion of the court.
8. Although General Recommendation 19 (which concerns violence against women) identifies domestic violence as a form of discrimination that inhibits women's ability to enjoy rights and freedoms on a basis of equality with men, Samoa has not yet incorporated domestic violence offences into its criminal laws. This is required for compliance with CEDAW.
9. Infanticide refers to the killing of a child by its mother (in contrast to abortion which refers to the destruction of a foetus). Full compliance with CEDAW requires that an offence of infanticide replaces a charge of murder or manslaughter and has a reduced sentence recognising the societal pressures that lead women to kill their children. Women who do so should not be held accountable to charges of murder or manslaughter. In full compliance with CEDAW an offence of infanticide is contained in the Samoan criminal law legislation replacing a charge of murder and manslaughter with a separate offence of infanticide and a corresponding reduced penalty of 3 years. Further, the definition of infanticide is not restricted to the effects of lactation and birthing but includes 'any disorder consequent on childbirth' which in accordance with the research recognises that such killings are linked to post-natal depression caused in large part, by the social pressures of raising children.
10. Article 4 requires that special measures provisions be introduced into national constitutions and legislation. The Constitution *does* contain a special measures provision for the 'protection and advancement' of women enabling the adoption of quotas and other measures to accelerate the position of women in Samoan society.
11. Article 5 requires States Parties to abolish or modify customary practices that discriminate against women. In Samoa, the Constitution gives constitutional status to custom in a range of contexts. In the absence of a guarantee that equality between men and women takes precedence over custom, traditional practices that discriminate against women may be lawful in some circumstances. This is apparent in several areas of women's lives, discussed below, where domestic laws incorporate custom to the disadvantage of women.
12. Article 6 requires States Parties to suppress all forms of trafficking in women and the exploitation of women in prostitution and Articles 2 and 11 require the elimination of discrimination against women in employment. Cumulatively, these articles mandate both the protection of sex workers from exploitation whilst also affording them the rights and protections of other workers. The act of soliciting is not an offence in Samoa for sex workers, which complies with CEDAW. However, Samoa criminalises the aiding and abetting of sex work and the operation of organised premises. Experience and research shows that organised premises rather than street work is safer for sex workers. Legalising brothels and implementing work conditions and safeguards that are present in other workplaces (such as regulated standards of occupational safety, standard rates of pay, parental leave, sick leave) would therefore

provide greater safety for sex workers and the community. Samoa has also failed to take a rigorous approach to the procurement of women without their consent with a penalty of only 3 years and offers no protection for the procurement of girls or trafficking either of girls or non-consenting adults.

13. Article 7 obligates States Parties to take all appropriate measures to eliminate discrimination in women's political and public lives. Universal suffrage has been achieved in Samoa. However, only matai are eligible to represent their constituencies, and although there are no formal legal barriers to women becoming matai and participating in the political and public arena, the reality is that only a few women do achieve matai status. The result is indirect discrimination. Consequently, Samoa has only 4 female members of parliament out of a total of 49 seats, and in non-compliance with CEDAW, has not introduced special measures such as quotas to ensure higher numbers of women enter parliament and participate in the governance of their countries.
14. Article 8 requires States Parties to ensure that women have equal opportunities to represent their governments at the international level. Although there is no legal barrier preventing women from representing their government in Samoa, the low numbers of women who do so necessitates the introduction of quotas to raise participation.
15. Article 9 requires States Parties to eliminate discrimination in the areas of nationality, citizenship and domicile. Samoa provides women with equal rights in all areas of citizenship and nationality and is in full compliance with CEDAW. Women have equal rights with men when they marry a non-national, they can determine their children's citizenship and nationality on an equal basis with the fathers of their children and they have equal rights to acquire and obtain citizenship.
16. Article 10 obligates States Parties to ensure women have equal rights and opportunities in education. The provision of compulsory education is essential to ensure girls are equally prioritised and not discriminated against in early education. Samoa has introduced compulsory schooling at both the primary and secondary level (ages 5-14). However, since females do not participate equally in tertiary education in Samoa, full compliance with Article 10 requires the government to adopt special measures for the advancement of women in education which it has not yet done. A prohibition on the expulsion of pregnant students is also required for compliance with CEDAW so as to ensure that girls are not discriminated against by educational institutions due to their pregnant status.
17. Article 11 obligates States Parties to eliminate discrimination in employment. Women in Samoa have many of the same rights in employment as men, although, there are a number of aspects of employment law in Samoa that discriminate against women. Whilst the public service provides anti-discrimination protection for women, there are no similar provisions in the employment legislation that governs the private sector. The legislation also restricts women's employment choices by banning them from night work and manual labour 'unsuited to their physical capacity'. Such protectionist provisions interfere with women's autonomy and place unreasonable restrictions on their right to choose professions and employment.
18. In the area of maternity leave, the public service

sector in Samoa offers more generous allowances than the minimum standards granted in the private sector. However, neither sector fully meets the standards of 14 weeks paid maternity leave recommended by CEDAW and the International Labour Organisation (the ILO recommends a period of 14 weeks maternity leave and CEDAW recommends that this period be paid). The public service entitles female civil servants to 8 weeks of maternity leave on full pay. However, the *Labour and Employment Act* which governs the private sector does not make any provision for maternity leave. Finally, there is no protection from dismissal leaving women in precarious positions in relation to job security if they require (or choose) to take further leave.

19. Whilst the legislation creates a general duty on employers to provide 'safe' working conditions, Samoa has not introduced any specific health protection for pregnant workers and there is no provision for breastfeeding mothers. Similarly, the absence of any state or employer funded childcare facilities in Samoa is likely to accentuate the difficulties nursing mothers face in the workplace.
20. The CEDAW Committee in General Recommendations 12 and 19 has identified sexual harassment in the workplace as a form of discrimination against women. General Recommendation 19 defines sexual harassment as unwelcome sexually determined behaviour such as physical contact and advances, sexually coloured remarks, showing pornography and sexual demands whether by words or actions. Such actions can be humiliating for the recipient and are discriminatory when they create a hostile work environment. Protection from sexual harassment is absent in Samoa and there is no scope for a remedy under the criminal code as permitted in the Solomon Islands; or in human rights legislation as available in Fiji; or in public sector legislation as provided in PNG.
21. Article 12 requires States Parties to ensure that women have access to health care services including those related to family planning. Abortion is criminalised in Samoa with a penalty of 7 years imprisonment and although abortion can be lawfully carried out to save a mother's life, women do not have access to safe abortion facilities as of right. The failure to decriminalise abortion and to provide safe accessible facilities for women who require abortions endangers their health and that of any child born subsequent to a failed abortion since research indicates that when a mother dies (including as a result of unsafe abortion) the chance of survival of all surviving children under 5 is significantly reduced.
22. Article 13(b) of CEDAW provides that women should be afforded equal rights to bank loans, mortgages and other forms of financial credit free from discrimination. Although there is no legislative barrier to women in Samoa from accessing such services, discrimination continues to hinder women from obtaining credit and loans to purchase property or businesses, thus interfering with their autonomy and ability to earn a livelihood. Article 13(c) of CEDAW requires that women have an equal right to participate in recreational activities, sports and all aspects of cultural life and there are no legislative barriers in Samoa preventing women from doing so.
23. Article 14 obligates States Parties to put in place measures to ensure the equality of rural women. Rural women often play a significant role in the economic survival of their families and communities although they are frequently disadvantaged in areas such as land ownership, health, education and housing to name a few. The achievement of substantive equality for

rural women and compliance with CEDAW requires temporary special measures provisions to be incorporated into both the Constitution and legislation. Samoa, however, has not done so as yet.

24. Article 15 requires States Parties to guarantee women equality before the law and equal rights to participate in all aspects of civil life. Samoa expressly guarantees women equality before the law and there are no legal barriers to women's participation in court and tribunal processes, nor are women denied the right to conclude contracts and administer property.
25. Article 16 obligates States Parties to remove discrimination in family and personal laws including marriage, separation, divorce, maintenance, child custody, property division, paternity and inheritance. The CEDAW Committee in General Recommendation 21 has nominated 18 as the minimum age of marriage for both males and females. In Samoa in non-compliance with CEDAW the minimum age for marriage is 18 for males and 16 for females reinforcing a view that girls 'mature' more quickly than males. Samoa does, however, in compliance with CEDAW, require the registration of all marriages and prohibit bigamy. Whilst the legislation requires the consent of *either* parent in the marriage of minors this leads only to formal equality as the consent of fathers is likely to be privileged over mothers.
26. Fault based divorces, which requires proof of a matrimonial offence such as desertion or habitual rape, place women in the difficult position of having to provide evidence of situations that may be humiliating, embarrassing, or that may interfere with their dignity and privacy. Women also face discrimination in proving fault, particularly cruelty and adultery if they choose not to be witnesses or they do not wish to attend court proceedings. Divorce in Samoa is based on fault based criteria (including adultery, desertion and cruelty) and is therefore not compliant with CEDAW.
27. The CEDAW Committee in General Recommendation 19(23) (which deals with violence against women, in relation to Articles 16 and 5 of CEDAW) states that a lack of economic independence or an inability to gain custody of their children upon separation forces many women to stay in violent or difficult relationships. Samoa *does* provide for maintenance orders during separation and after divorce for both children and spouses. However, the basis on which maintenance is provided is left largely to the discretion of the court with the broad criteria of what the judge considers is 'proper' and 'just'. The standards recommended by CEDAW, i.e., the needs and means of both parties, the financial commitments of both parties to themselves and others, their respective capacities to earn and the needs of any children for whom maintenance is sought are unlikely to be prioritised. Unmarried mothers also can claim maintenance for children however they must lodge the claim within 6 years of the child's birth, potentially denying the joint responsibility of children by both parents until the age of majority.
28. In General Recommendation 21, which deals with equality in family relations, the Committee states that the division of marital property should include recognition of non-financial contributions during a marriage such as raising children, caring for elderly relatives, and discharging household duties. Samoa *does* provide for the payment of a lump sum having regard to 'her conduct, her fortune and the ability of her husband'. Such criterion is

unlikely to include women's unpaid contributions to the household.

29. The best interests of the child as the paramount consideration is universally accepted as the principle on which custody determinations should be based, according to Article 16(f) of CEDAW. Samoa has not, however, adopted the standard of the best interests of the child and instead custody is determined by the judge on the basis of what appears 'just'.
30. In General Recommendation 21, the CEDAW Committee states that the right to own, manage, enjoy and dispose of property is central to a woman's right to enjoy financial independence. Women in Samoa do not enjoy equality in relation to the ownership, administration, enjoyment and disposition of

property since patrilineal inheritance is given legislative status leaving men in control of many aspects of land and property.

31. Article 16 requires that inheritance laws should apply equally to males and females. Inheritance laws apply equally to males and females in Samoa under the formal law, although customary rules of inheritance may lawfully operate in conflict with the formal law
32. A series of tables detailing Samoa's compliance with CEDAW is provided in the following pages. Each table relates to an article of CEDAW and contains the applicable indicator(s), the level of compliance achieved, the relevant legislation and finally where required, a brief commentary explaining how Samoa's legislation does or does not meet the indicator.

Samoa: Detailed Analysis of Indicators

ARTICLE 1: DEFINITION OF DISCRIMINATION AGAINST WOMEN ARTICLE 2: OBLIGATION TO ELIMINATE DISCRIMINATION			
INDICATOR	COMPLIANCE	RELEVANT LEGISLATION	COMMENTARY
1.1 Does the Constitution guarantee fundamental human rights and freedoms to men and women equally including in the political, economic social, cultural, civil or any other field?	Partial	<i>Constitution of the Independent State of Western Samoa 1960, s 5-15</i> : All citizens entitled to the fundamental rights guaranteed in the constitution including: right to life, right to personal liberty, freedom from inhumane treatment, freedom from forced labour, right to a fair trial, rights concerning criminal law, freedom of religion, rights concerning religious instruction, right to freedom of speech, assembly, association, movement and residence, rights to property, freedom from discrimination.	The rights protected include most of those required by CEDAW. There is therefore substantial compliance with this indicator but <ul style="list-style-type: none"> The right to the highest attainable standard of physical and mental health is not a guaranteed right. Substantive equality is not a guaranteed right.
1.2 Is there a constitutional guarantee of substantive equality between men and women?	No	<i>Constitution of the Independent State of Western Samoa 1960, s 15(1) s 1</i> . Guarantee of the equal protection of the law.	A guarantee of equal protection of the law requires that the law does not discriminate in its application but does not guarantee equal benefits or outcomes as required by CEDAW.
1.3 Does the Constitution contain an anti-discrimination clause on the ground of sex/gender?	Yes	<i>Constitution of the Independent State of Western Samoa Constitution of Samoa 1960, s 15(2)</i> . No person shall be subject to any disability or restriction or confer on any person any privilege or advantage on the ground of sex.	
1.4 Does the Constitution contain an anti-discrimination clause on the ground of marital status?	Yes	<i>Constitution of the Independent State of Western Samoa 1960, s 15(2)</i> . No person shall be subject to any disability or restriction or confer on any person any privilege or advantage on the ground of family status.	Family status arguably includes marital status.
1.5 Does the Constitution contain an anti-discrimination clause on the ground of sexual orientation?	No		
1.6 Does the Constitution contain an anti-discrimination clause on the ground of HIV status?	No		
1.7 Does the Constitution contain an anti-discrimination clause on the ground of disability?	No		

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1.8 Does the breadth of the anti-discrimination clause encompass direct and indirect discrimination?	Yes	<i>Constitution of the Independent State of Western Samoa 1960, s 15(2)</i> . Uses the terms 'expressly or in its practical application' when describing the reach of unlawful discrimination.	The terminology extends the reach of the protection beyond direct discrimination to that of indirect discrimination.
1.9 Does the anti-discrimination clause bind public authorities and institutions?	Yes	<i>Constitution of the Independent State of Western Samoa 1960, s 15</i> . Extends to law and executive or administrative action of the State.	
1.10 Does the anti-discrimination clause bind any person, organisation or enterprise?	No		No express extension of the protected rights to person, organisation or enterprise. However, the Samoan Supreme Court has consistently held that the Bill of Rights <i>does</i> bind particular state actors including chiefs, village authorities, churches and prayer groups. Legislative recognition of this position would ensure that the common law position is not overridden in a later court decision.
1.11 Are sanctions imposed for breach of anti-discrimination provisions?	Yes	<i>Constitution of the Independent State of Western Samoa 1960, s 4</i> . Supreme Court has power to make all such orders as necessary and appropriate to secure for applicant enjoyment of any rights conferred.	
1.12 Are there specific domestic violence offences in the criminal law legislation (Penal Code)?	No	There is no specific domestic violence protection. Four offences in the <i>Crimes Ordinance 1961</i> could be used in limited circumstances. <ul style="list-style-type: none"> • s 78. Common assault - 1 year. • s 79. Assault causing grievous bodily harm - 7 years. • s 80. Actual bodily harm - 2 years. • s 82. Threats to kill or do bodily harm - 3 years. 	These provisions do not embrace the complexity of domestic violence and light sentences mean they are an ineffective protection for women in domestic violence situations.
1.13 Is stalking a criminal offence?	No		
1.14 Is a restraining order available in situations of sexual and domestic violence regardless of marital status?	Partial	<i>Divorce and Matrimonial Causes Ordinance 1961, s 20</i> . Molestation of divorced wife by her husband if at any time after a decree of dissolution of marriage an offence. <ul style="list-style-type: none"> • (a) Commits any trespass by entering or remaining upon or in any land, house, or building which is in her occupation or in which she is dwelling; or 	This provides protection for women in threatening situations. However, it does not extend to unmarried women.

ARTICLE 1: DEFINITION OF DISCRIMINATION AGAINST WOMEN ARTICLE 2: OBLIGATION TO ELIMINATE DISCRIMINATION			
INDICATOR	COMPLIANCE	RELEVANT LEGISLATION	COMMENTARY
		<ul style="list-style-type: none"> (b) Attempts or threatens to commit any such trespass; or (c) Molests her by watching or besetting her dwelling house or place of business, employment or residence, or by following or waylaying her in any road or other public place. 	
1.15 Is there mandatory prosecution for domestic violence offences?	No		
1.16 Does the criminal law legislation contain a broad range of sexual assault offences graded on the basis of seriousness to the victim?	Partial	<p><i>Crimes Ordinance 1961, s 47 - 54.</i> There are a range of sexual offences with varying penalties.</p> <ul style="list-style-type: none"> s 47. Rape - life imprisonment. s 48. Attempted rape - 10 years imprisonment. s 50. Sexual intercourse by male of female girl under 21. living in family (consent no defence) - 7 years imprisonment. s 51. Sexual intercourse with girl under 12 (consent no defence) - 10 years imprisonment. s 52. Indecency with girl under 12 (consent no defence) - 7 years imprisonment. s 53. Sexual intercourse or indecency 12 and under 16 (consent no defence) - 7 years imprisonment. s 54. Indecent assault - 5 years imprisonment. 	<p>These offences provide a range of penalties that are adequately graded according to seriousness. The presence of an offence in relation to sexual intercourse with a female under 21 under the perpetrator's care and protection recognises the power imbalance present in such situations and the serious harm that the victim can experience.</p>
1.17 Does the definition of rape and/or sexual assault offences include penetration of non-penile objects to anus, vagina and mouth?	No	<i>Crimes Ordinance 1961, s 46.</i> Sexual intercourse is complete upon penetration.	Penetration is confined to penile penetration and does not include the range of ways that women can be sexually violated.
1.18 Is there an offence of incest for girls and women? If there is an offence of incest for girls and women then there is no compliance with this indicator	No	<i>Crimes Ordinance 1961, s 49.</i> Anyone over 16 who commits incest-7 years imprisonment.	<p>There is an offence of incest in the Code which means that women and girls over 16 can be charged with an offence. Therefore there is no compliance with this indicator. This offences are discriminatory because:</p> <ul style="list-style-type: none"> No girl under 18 should be charged with any sexual offence and consent should be irrelevant. An offence of incest against women and girls fails to recognise the power

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			imbalance between girls and women and male relatives. Incest is typically perpetrated by men against girls and women in non-consensual and coercive circumstances.
1.19 Have the terms indecency, carnal knowledge, defilement and insulting modesty been removed from the criminal law legislation?	Yes	<i>Crimes Ordinance 1961</i> . Indecency is the only term remaining in the legislation.	
1.20 Is consent specifically defined in the criminal law legislation outlining coercive circumstances?	Partial	<i>Crimes Ordinance 1961, s 47</i> . Does not constitute consent if obtained by fear of bodily harm or by threats, extorted by fear on reasonable grounds that the refusal would result in the death or grievous bodily injury to third person, impersonating husband, or by fraudulent representation.	Although this provision does cover a range of situations in which women may be coerced into consent, the list should be non-exhaustive and include threats to a third party.
1.21 Is there a legislative prohibition on the use of prior sexual conduct to establish consent?	No		
1.22 Is there a legislative prohibition on requirement for corroboration?	No		
1.23 Is there a legislative prohibition on the requirement for proof of resistance?	No		
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.	Partial	<i>Crimes Ordinance 1961, s 53</i> . Sexual intercourse with girl between 12 and 16 - defence honest and reasonable belief 16 or above if person charged under 21.	To be compliant with this indicator, there should be no defence available to the perpetrator of 'honest and reasonable belief that the victim is of legal age'. Whilst there is no defence in most offences the defence is open for a defendant under 21 to argue in relation to any girl 12 or over that he believed that she was 16. This removes the onus from the male actor to verify the age of the girl

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INDICATOR	COMPLIANCE	RELEVANT LEGISLATION	COMMENTARY
			onto the girl to reveal her age. However, there is partial compliance with this indicator as the defence is limited to those under 21.
1.25 Is a defence of consent unavailable in relation to a victim under 18?	Partial	<p><i>Crimes Ordinance 1961.</i></p> <ul style="list-style-type: none"> No defence of consent if under 16 except if younger than girl between 13 - 16. s 50. Sexual intercourse by male of female girl under 21 living in family (consent no defence). 	<p>Although 18 is the recommended age of majority the exception if younger is reasonable. This provision provides protection to a girl living in the care and protection of a male recognising the power imbalance in such situations.</p>
1.26 Is there an exemption from prosecution for marital rape? If yes, then there is no compliance with this indicator.	Yes		To be compliant with this indicator, men should not be exempted from being prosecuted for marital rape. If the Penal Code contains a law which protects men from being charged with marital rape, then there is no compliance with this indicator. The Penal Code does <i>not</i> exempt husbands from prosecution for marital rape and Samoa is therefore in full compliance with this indicator and with CEDAW.
1.27 Is there mandatory prosecution for sexual offences?	No		
1.28 Is bail unavailable for sexual offences if risk to victim?	No	<i>Criminal Procedure Act 1972, s 71.</i> No automatic right to bail if charged with an imprisonable offence. Bail is granted at the discretion of the Court and there are no guiding principles.	There is no legislative protection for victims of sexual assault.
1.29 Are there minimum sentences for sexual offences?	No	<i>Crimes Ordinance 1961.</i> All sentences for sexual assault use the phrase 'not exceeding' therefore no minimum sentence.	Minimum sentences ensure that light sentences are not awarded in sexual assault cases.

ARTICLE 1: DEFINITION OF DISCRIMINATION AGAINST WOMEN ARTICLE 2: OBLIGATION TO ELIMINATE DISCRIMINATION			
INDICATOR	COMPLIANCE	RELEVANT LEGISLATION	COMMENTARY
1.30 Is there a provision in the criminal law legislation which states that customary practices of forgiveness shall not affect criminal prosecution or sentencing?	No		
1.31 Is there legislative provision for compensation for victims of sexual and domestic violence?	No		
1.32 Does the criminal law legislation allow for infanticide to replace a charge of murder or manslaughter?	Yes	<i>Crimes Ordinance 1961, s 72(1)</i> . Where a woman causes the death of her child within 12 months of birth in circumstances where the balance of her mind was disturbed by reason of her not having fully recovered from the effect of childbirth or by reason of lactation or of any disorder consequent upon childbirth in a manner that amounts to culpable homicide she may be guilty of infanticide, and not of murder or manslaughter - imprisonment of not exceeding 3 years.	In compliance with CEDAW, the legislation provides that a charge of infanticide replaces both murder and manslaughter with a much lighter sentence to recognise the societal pressures that might lead a mother to kill her child.
1.33 Does the definition of infanticide include environmental and social stresses?	Partial	As above.	Research suggests that women who kill their children do so in part because of the environmental and social stresses of raising children. The legislation includes 'any disorder consequent on childbirth' which could include post natal depression caused by environmental causes in partial compliance with this indicator.

ARTICLE 3: GUARANTEE OF BASIC HUMAN RIGHTS AND FUNDAMENTAL FREEDOMS

INDICATOR	COMPLIANCE	RELEVANT LEGISLATION	COMMENTARY
3.1 Is there legislation establishing national human rights machinery charged with promoting and protecting human rights including women rights?	No		
3.2 Is there legislation establishing a funded body to monitor the implementation of non-discriminatory law and policy for the advancement of women?	Yes	<i>Ministry of Women's Affairs Act, 1990.</i> This Act establishes a Ministry empowered to identify gender discrimination against women and make recommendations for its progressive removal.	The creation by legislation of a body to monitor the implementation of policies designed to advance women's position is in full compliance with the indicator. The legislative establishment of such a body protects it from removal in times of political upheaval or economic downturn.

ARTICLE 4: ACCELERATION OF EQUALITY BETWEEN MEN AND WOMEN

INDICATOR	COMPLIANCE	RELEVANT LEGISLATION	COMMENTARY
4.1 Does the Constitution contain a temporary special measures provision?	Yes	<i>Constitution of the Independent State of Western Samoa 1960, s 15(3)(b).</i> Nothing in this article shall prevent the making of any provision for the protection or advancement of women.	
4.2 Are special measures exempt from discrimination on the grounds of sex, marital status, sexual orientation, disability, and HIV status?	Partial	<i>Constitution of the Independent State of Western Samoa 1960, s 15(2)(3).</i> Exempt from discrimination on grounds of sex and family status.	Special measures that 'discriminate' on the grounds of sexual orientation, HIV status or disability are not protected by the Constitution.

ARTICLE 5: SEX ROLES AND STEREOTYPES

INDICATOR	COMPLIANCE	RELEVANT LEGISLATION	COMMENTARY
5.1 Is there a provision in the Constitution which gives precedence to a constitutional guarantee of equality if there is a conflict between custom and equality law?	No	<i>Constitution of the Independent State of Western Samoa 1960</i> <ul style="list-style-type: none"> • s 100. Matai title is held in accordance with Samoan custom and usage. • s 101(1). All land in Western Samoa is customary land, freehold land or public land. (2) Customary land means land held in accordance with Samoan custom and 	Custom is given lawful status by the Constitution in a range of areas. In the absence of a constitutional guarantee that equality between men and women takes precedence over custom

ARTICLE 5: SEX ROLES AND STEREOTYPES

INDICATOR	COMPLIANCE	RELEVANT LEGISLATION	COMMENTARY
		<p>in accordance with Samoan custom and usage.</p> <ul style="list-style-type: none"> • s 102. No person can alienate or dispose of customary land or interest in customary land. • s 103. Establishes a Land and Titles Court with jurisdiction in relation to Matai titles and customary land. • s 11. 'Law' includes any custom or usage which has acquired the force of law in Western Samoa or any part thereof under the provisions of any Act or under a judgment of a Court of competent jurisdiction. 	<p>this means that custom that discriminates against women may be lawful in a range of circumstances, particularly in relation to land.</p>

ARTICLE 6: EXPLOITATION OF WOMEN

INDICATOR	COMPLIANCE	RELEVANT LEGISLATION	COMMENTARY
6.1 Is the act of soliciting decriminalised?	Yes		Soliciting is not a criminal offence.
6.2 Is aiding and abetting consensual acts of soliciting decriminalised?	No	<p><i>Crimes Ordinance 1961.</i></p> <ul style="list-style-type: none"> • s 58K. Operating a brothel - 5 years imprisonment. • s 58L. Living off the earnings of prostitution and soliciting for any prostitute - 3 years imprisonment. 	<p>These offences criminalise those (both male and female) who aid and abet prostitution including operating a brothel. Although formally equal the criminalisation of such activities prevents the establishment of safeguards to be established as in any other workplace.</p>
6.3 Is it a criminal offence to procure any woman without consent or any girl under 18?	Partial	<p><i>Crimes Ordinance 1961, s 58M.</i> Procuring any girl or woman for sexual intercourse - 3 years imprisonment.</p>	<p>This provision does not provide adequate protection from the range of situations in which women are coerced into prostitution without their consent and does not give special protection to girls under 18.</p>
6.4 Does employment legislation including occupational health and safety legislation protect sex workers?	No		<p>Sex workers should have the same rights and protections as other workers.</p>
6.5 Is the trafficking of women prohibited?	No		
6.6 Is sex tourism prohibited?	No		

ARTICLE 7: POLITICAL AND PUBLIC LIFE			
INDICATOR	COMPLIANCE	RELEVANT LEGISLATION	COMMENTARY
7.1 Is there an equal right to vote?	Yes	Universal suffrage introduced in 1991.	
7.2 Is there equal eligibility for political representation?	Partial	<ul style="list-style-type: none"> • <i>Constitution of the Independent State of Western Samoa 1960, s 45.</i> Parliament consists of 41 persons elected by their territorial constituencies and a similar number 'as nearly as possible' of members elected by individual voters. All citizens have legal entitlement to stand as individual member but: • <i>Electoral Act, s 5.</i> To represent a constituency person must hold a matai title. • <i>Samoan Status Act 1963, s 6.</i> Matai titles are legally available equally to men and women. 	These provisions provide <i>de jure</i> equality between men and women. However, women experience indirect discrimination because matai titles are rarely bestowed on women (around 10%).
7.3 Is there legislative provision for minimum quotas of women in Parliament?	No		Despite equal eligibility to enter parliament only 4 women have held or currently hold any of the 49 seats in the Samoan parliament. Quotas, which have raised numbers of women in parliament in other countries, may assist in achieving substantive equality in this area.
7.4 Do women have an equal right to participate in NGOs?	Yes		No legal barrier preventing women from participating equally in NGOs.
7.5 Is there legislation (other than Charitable Societies legislation) enabling NGOs to register and mobilise to promote the advancement of women, without political interference?	No		<i>Cooperative Societies Ordinance 1952</i> enables societies to register but the purpose must be economic.

ARTICLE 8: INTERNATIONAL REPRESENTATION AND PARTICIPATION

INDICATOR	COMPLIANCE	RELEVANT LEGISLATION	COMMENTARY
8.1 Do women have equal opportunity to represent government at international level and participate in the work of international organisations?	Partial		Whilst there is no legal barrier preventing women from representing government at the international level, few do, and the introduction of a quota system would ensure full compliance with this indicator.

ARTICLE 9: NATIONALITY AND CITIZENSHIP

INDICATOR	COMPLIANCE	RELEVANT LEGISLATION	COMMENTARY
9.1 Do women have an equal right to acquire, change or retain their nationality?	Yes	<i>Citizenship Act 2004, s 6-8.</i>	
9.2 Does marriage to a non-national or change of husband's nationality affect wife's nationality? If there is no change to a wife's nationality after marriage there is full compliance with this indicator.	Yes	<i>Citizenship Act 2004, s 9.</i>	To be compliant with this indicator, the marriage of a woman to a non-national should not affect her nationality. The legislation does <i>not</i> alter the nationality of female citizen upon marriage and therefore there is full compliance with this indicator and with CEDAW
9.3 Do both spouses have an equal right to residency, citizenship and employment when spouse is a non-national?	Yes	<i>Citizenship Act 2004, s 9.</i>	
9.4 Do both spouses have equal rights in determining nationality of children?	Yes	<i>Citizenship Act 2004, s 6.</i>	
9.5 Do women have an equal right to obtain passport?	Yes	<i>Permits and Passports Act 1978.</i>	

ARTICLE 10: EDUCATION

INDICATOR	COMPLIANCE	RELEVANT LEGISLATION	COMMENTARY
10.1 Does the legislation guarantee women and girls equal access to education?	No		
10.2 Is there legislation that creates special measures for the advancement of women in education?	No		
10.3 Is there compulsory primary education for girls and boys?	Yes	<i>Western Samoa Compulsory Education Act 1992.</i> Education compulsory for males and females from age 5-14.	
10.4 Is there compulsory secondary education for girls and boys?	Yes	<i>Western Samoa Compulsory Education Act 1992.</i> Education compulsory for males and females from age 5-14.	
10.5 Is family life (reproductive and sexual education) compulsory in schools?	No		
10.6 Is there a legislative prohibition on expulsion from school because of pregnancy?	No		

ARTICLE 11: EMPLOYMENT

INDICATOR	COMPLIANCE	RELEVANT LEGISLATION	COMMENTARY
11.1 Are there anti-discrimination provisions in employment legislation on the grounds of sex, marital status, pregnancy, sexual orientation and HIV status with sanctions?	No	<i>Public Service Act 2004, s 2.</i> Object of the Act is to establish a public service in which decisions are made without discrimination.	
11.2 Are there special measures provisions for the advancement of women in employment?	No		
11.3 Do women enjoy equal conditions of work including leave, superannuation and Workers Compensation?	Partial	<p><i>Accident Compensation Act 1989</i></p> <ul style="list-style-type: none"> • s 1. Worker is 'any person who works under a contract' • s 2. For deceased worker, wife and children are presumed to be dependant unless wife has deserted husband. • s 35. Non-workers can claim in some circumstances but excludes rewards for services rendered by family member. 	<p>This is likely to exclude outworkers, domestic work and part timers. There is also no provision for family of the wife if she is the worker.</p> <p>This provision is discriminatory as it excludes work done within the family (work primarily undertaken by women).</p>

ARTICLE 11: EMPLOYMENT

INDICATOR	COMPLIANCE	RELEVANT LEGISLATION	COMMENTARY
		<i>Labour and Employment Act 1972, s 2.</i> Worker includes any person who is contracted to employer.	Likely to exclude outworkers, domestic work and part time workers.
11.4 Does the legislation provide sexual harassment protection from employers and co-workers?	Partial	<i>Public Service Act 2004, s 19 (c).</i> All employees and CEO's shall treat everyone without coercion or harassment.	This provision applies only to public service employees and does not specifically refer to <i>sexual harassment</i> .
11.5 Does the definition of sexual harassment the breadth of unwanted behaviours?	No		
11.6 Does the legislation contain an equal pay provision?	Yes	<i>Labour and Employment Act 1972, s 19.</i>	
11.7 Does the legislation contain pay equity legislation provisions?	No		
11.8 Does the legislation provide for an equal retirement age?	No	No legal guarantee of equal retirement age for males and females.	
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	<i>Labour and Employment Act 1972,</i> <ul style="list-style-type: none"> • s 33(1). Women cannot be employed between midnight and 6am unless nursing, medical, police, postal, telephone, telegraphic and other essential govt services. • 33(2). Women cannot be employed in 'manual work unsuited to her physical capacity'. 	To be compliant with this indicator, there should be no restrictions on a woman's choice of employment. The <i>Labour and Employment Act</i> prevents women from undertaking certain types of work. This is discriminatory and in non-compliance with the indicator and with CEDAW.
11.10 Does the legislation provide for health protection during pregnancy?	Partial	<i>Occupational Safety and Health Act 2002, s 11.</i> A general duty to take all practical steps to protect the 'safety, health and welfare at work of employees' but no specific protection for pregnant workers.	Although there is a general duty to provide medical care there is no particular responsibility on employers to provide health protection for pregnant workers.
11.11 Does the legislation provide paid maternity leave of not less than 14 weeks?	Partial	Administrative Order pursuant to the <i>Public Service Act 2004</i> provides for 8 weeks paid maternity leave. This can be extended to 6 months but is unpaid beyond 8 weeks. There is no equivalent provision in the <i>Labour and Employment Act 1972.</i>	Maternity leave enables women to combine their family lives with work and participation in public life.
11.12 Does the legislation provide protection from dismissal because of pregnancy or maternity leave?	No		

ARTICLE 11: EMPLOYMENT

INDICATOR	COMPLIANCE	RELEVANT LEGISLATION	COMMENTARY
11.13 Does the legislation guarantee the provision of childcare by employer or state?	No		
11.14 Does the legislation provide reasonable nursing time during work hours?	No		

ARTICLE 12: HEALTH CARE FAMILY PLANNING

INDICATOR	COMPLIANCE	RELEVANT LEGISLATION	COMMENTARY
12.1 Do women have access to safe and legal abortion facilities?	No	<ul style="list-style-type: none"> <i>Crimes Ordinance, s 73A, s 73B, s 73C.</i> Abortion is a criminal offence - 7 years. But <ul style="list-style-type: none"> <i>s 73(3).</i> No one is guilty of any crime who before or during the birth of any child causes its death by means employed in good faith for the preservation of the life of the mother. 	These provisions are discriminatory to women because: <ul style="list-style-type: none"> The criminalisation of abortion denies women access to safe medical facilities and encourages the use of unsafe methods and facilities. The criminalisation of abortion restricts women's autonomy and right to choose if and when they have children. The serious penalty for women who procure their own abortion of 7 years fails to account for the reasons why women may choose to abort.

ARTICLE 13: ECONOMIC AND SOCIAL BENEFITS

INDICATOR	COMPLIANCE	RELEVANT LEGISLATION	COMMENTARY
13.1 Do women have an equal right to family benefits regardless of marital status?	Yes		Samoa does not have a social security system.
13.2 Do women have equal right to receive bank loans, mortgages and financial credit?	Yes		No legal barrier to receive bank loans, mortgages and financial credit.
13.3 Do women have an equal right to participate in recreational activities, sports and cultural life?	Yes		No legal barrier. to participate in recreational activities, sports and cultural life.

ARTICLE 14: RURAL WOMEN

INDICATOR	COMPLIANCE	RELEVANT LEGISLATION	COMMENTARY
14.1 Is there legislation that provides for special measures to advance substantive equality for rural women?	No		Many women in Samoa live in rural communities and it is crucial that Samoa incorporates special measures into either the national constitution or legislation to advance substantive equality.

ARTICLE 15: EQUALITY BEFORE THE LAW AND CIVIL MATTERS

INDICATOR	COMPLIANCE	RELEVANT LEGISLATION	COMMENTARY
15.1 Does the Constitution guarantee equality before the law?	Yes	<i>Constitution of the Independent State of Western Samoa 1960, s 15(1) s 1.</i> Guarantee of equality before the law.	
15.2 Do women have an equal capacity in civil matters – can women sue?	Yes		No legal barrier to women's right to sue.
15.3 Do women have an equal right to participate in courts and tribunals at all stages?	Yes		No legal barrier to women's right to participate in court proceedings.
15.4 Do women (regardless of marital status) have an equal right to conclude contracts and administer property?	Yes		No legal barrier to women's right to conclude contracts and administer property.
15.5 Do women have an equal right to be executors or administrators of estates?	Yes	<i>Administration Act 1975, s 6.</i>	
15.6 Is there legislation that nullifies all contracts and instruments that limit women's legal capacity?	No		No specific legislative provisions with effect of nullifying contracts and instruments that limit women's legal capacity.
15.7 Do women have an equal right to choose their residence and domicile?	Yes		No legal barrier preventing women from choosing their place of residence and domicile.

ARTICLE 16: PERSONAL AND FAMILY LAW			
INDICATOR	COMPLIANCE	RELEVANT LEGISLATION	COMMENTARY
16.1 Does the legislation guarantee women's entry into marriage with full and free consent?	Yes	<i>Divorce and Matrimonial Causes Ordinance 1961, s 9.(2)</i> A marriage shall be void by reason of duress if there was at the time of the marriage an absence of consent by either party to marriage to the other party.	
16.2 Does the legislation allow marriages to be nullified if they took place under force, duress or undue influence?	Yes	As above 16.1	
16.3 Is there an equal minimum age of 18 for marriage?	No	<i>Marriage Ordinance 1961,</i> <ul style="list-style-type: none"> • s 9. 18 for males, 16 for females with parental consent • s 10. 21 for men and 19 for girls without parental consent 	The age of marriage is different for males and females and therefore not in accord with the CEDAW Committee's recommended equal marriageable age of 18.
16.4 Is there a legislative prohibition on child marriage?	Partial	<i>Marriage Ordinance 1961, s 9.</i> Marriage under 16 is void.	Full compliance would not recognise marriage under 18.
16.5 Does the legislation require registration of marriage in an official registry?	Yes	<i>Marriage Ordinance 1961, s 18.</i>	
16.6 Does the legislation prohibit bigamy?	Yes	<i>Crimes Ordinance, s 74A, s 74B.</i>	
16.7 Do women have an equal right to choose family name?	Yes		No legal barrier to equal right to choosing family name.
16.8 Is the consent of both parents equal in the marriage of minors?	Partial	<i>Marriage Ordinance 1961, s 10.</i> (1) A marriage officer shall not solemnise the marriage of any man under the age of 21 years or of any woman under the age of 19 years without the consent of one of the parents.	Although formally equal, the failure to require both parents' consent may lead to women's consent having lesser value. Full compliance with the indicator requires the consent of both.
16.9 Are both spouses equal in ownership, acquisition, management, administration, enjoyment and disposition of property?	No		The legislation does not guarantee equality to both spouses in the ownership, acquisition, management, administration, enjoyment and disposition of property. Land tenure is instead primarily based on custom (which is guaranteed by the Constitution) where women are not fully equal in the ownership, acquisition, management,

ARTICLE 16: PERSONAL AND FAMILY LAW			
INDICATOR	COMPLIANCE	RELEVANT LEGISLATION	COMMENTARY
			administration, enjoyment and disposition of property.
16.10 Does the legislation provide for a maintenance and custody order during separation based on need?	Partial	<p><i>Marriage and Affiliation Act, 1967.</i></p> <ul style="list-style-type: none"> • s 25. Interim maintenance order - if hearing of an application adjourned for any period exceeding one week can make an order directing weekly sum towards the future maintenance of wife or husband or children until the final determination of the case. • s 25. Order re custody of child during currency of maintenance order - if there is an order for the maintenance of any child, whether legitimate or illegitimate, custody awarded on 'such terms as he thinks proper' <p><i>Divorce and Matrimonial Causes Ordinance 1961, s 24.</i> In any proceedings for divorce, or nullity of marriage, or judicial separation, the Court may make such provision for custody as appears 'just' with respect to the custody, maintenance, and education of the children, the marriage of whose parents is the subject of the proceedings.</p>	<p>These two statutes provide maintenance and custody orders for married women upon separation. Unmarried women can receive maintenance for children and custody orders. However, the terms of any award are 'such terms as the judge thinks proper' and 'just'. This is an unsatisfactory criterion as it is not based on need. In relation to custody the best interests of the child is not the paramount principle.</p>
16.11 Is there legislation to enable women to occupy the marital home when settlement is not possible or in situations of domestic violence?	No		
16.12 Does the legislation provide a right to restitution of conjugal rights? If the legislation does not provide such an order then there is full compliance with this indicator.	Yes		<p>To be compliant with this indicator, the legislation should not empower the courts to provide an order for restitution of conjugal rights. The legislation does <i>not</i> provide for orders for restitution of conjugal rights (which are discriminatory as they take away a woman's autonomy to choose when and with whom she has sexual relations) and therefore is in full compliance with this indicator and with CEDAW.</p>

ARTICLE 16: PERSONAL AND FAMILY LAW			
INDICATOR	COMPLIANCE	RELEVANT LEGISLATION	COMMENTARY
16.13 Does the legislation provide for no-fault divorce?	No	<i>Divorce and Matrimonial Causes Ordinance 1961, s 7.</i> Fault based divorce. Includes 5 year separation.	The requirement to find fault places an unequal burden upon women who are more likely to be caught in untenable situations and face difficulties establishing fault.
16.14 Is there a duty on the court to promote reconciliation? If the legislation does not contain such a duty then there is full compliance with this indicator.	Yes		To be compliant with this indicator, there should not be a duty on the court to promote reconciliation between estranged spouses. Such a duty is discriminatory and non-compliant because it removes women's choices or reduces their autonomy to choose to leave a relationship. The legislation does <i>not</i> place a duty on the court to promote reconciliation and there is therefore full compliance with this indicator and with CEDAW.
16.15 Does the legislation provide for an equal division of property after divorce including unpaid contribution; future needs; future earning capacity?	No	<i>Divorce and Matrimonial Causes Ordinance 1961, s 22.</i> The Court may order that the husband secure to the wife such gross sum of money or annual sum of money for any term, not exceeding her life, as, having regard to her fortune (if any), to the ability of her husband, and to the conduct of the parties, that the Court may deem to be reasonable.	There is no legislative provision for the division of property. The court can order a lump sum to be paid to the wife however this is unlikely to recognise non-financial contributions or even financial contributions.
16.16 Does the legislation provide for the payment of child support after divorce based on need?	Partial	<i>Divorce and Matrimonial Causes Ordinance 1961, s 24.</i> In any proceedings for divorce, or nullity of marriage, or judicial separation, the Court may make such provision as appears 'just' with respect to the maintenance, and education of the children, the marriage of whose parents is the subject of the proceedings,	Although there is provision for child support, it is based on the criteria of what is 'just'. This is insufficient and instead should be based on the needs of the child.
16.17 Does the legislation provide for the payment of maintenance for the ex-spouse based on commitments, income, earning capacity, and assets?	Partial	<i>Marriage and Affiliation Act, 1967.</i> <ul style="list-style-type: none"> s 16(1). If husband has failed or intends to fail to provide wife with adequate maintenance, court can make a maintenance order against the husband 	These provisions are discriminatory and non-compliant with CEDAW because:

ARTICLE 16: PERSONAL AND FAMILY LAW			
INDICATOR	COMPLIANCE	RELEVANT LEGISLATION	COMMENTARY
		<p>in favour of the wife.</p> <ul style="list-style-type: none"> • s 16(2). Unless the wife is a destitute person maintenance order shall be not be made against the husband if it is proved that he is not of sufficient ability to contribute to her maintenance. • s 16(3). Where the husband and wife are living apart from one another and the wife has, in the opinion of the Magistrate, reasonable cause for refusing or failing to live with her husband, the husband shall not be deemed to have provided herewith adequate maintenance merely by reason of the fact that he is ready and willing to support her if and so long as she lives with him. • s 18(1). Every maintenance order shall be for such sum as the Magistrate thinks reasonable in all the circumstances. 	<ul style="list-style-type: none"> • The husband does not have to pay if he shows no means (even if his capacity to earn is greater) unless she is destitute. • If a woman does not have 'reasonable cause' for living apart she will not receive maintenance. Coupled with a fault based system of divorce this is likely to mean she must establish cruelty, desertion or adultery. • The criteria of 'reasonable' does not provide sufficient guidance in relation to earning capacity, commitments and needs.
16.18 Is custody and access to children based on best interests of child regardless of relationship of parents?	No	<i>Divorce and Matrimonial Causes Ordinance 1961, s 24.</i> In any proceedings for divorce, or nullity of marriage, or judicial separation, the Court may make such provision for custody as appears 'just'.	This provision fails to use the criteria of the welfare of the child as the paramount factor.
16.19 Does the legislation provide damages for adultery? If there is no provision for damages then there is full compliance with this indicator.	Yes		To be compliant with this indicator, the legislation should not provide damages for adultery. Damages for adultery are discriminatory as they seek to punish the sexual behaviour of consenting adults and interferes with their autonomy. The legislation does <i>not</i> provide a right to damages for adultery and therefore is in full compliance with the indicator and with CEDAW.

ARTICLE 16: PERSONAL AND FAMILY LAW

INDICATOR	COMPLIANCE	RELEVANT LEGISLATION	COMMENTARY
16.20 Do women have an equal right to guardianship, wardship, trusteeship and adoption?	Yes	<i>Infants Ordinance 1961, s 8.</i>	
16.21 Does the legislation recognise de facto rights (including same-sex couples) on the same basis as marriage?	No		
16.22 Does the legislation provide for an order to establish parentage?	Partial	<p><i>Marriage and Affiliation Act, 1967.</i></p> <ul style="list-style-type: none"> • s 10(2). Parentage established on the evidence of mother. • s 10(1). No person shall be adjudged to be the father of a child upon the evidence of the mother, unless her evidence is corroborated in some material particular to the satisfaction of the Magistrate. 	These provisions do provide for establishing parentage but the requirement to provide corroboration is onerous, discriminatory and non compliant with CEDAW.
16.23 Does the legislation provide for a contribution to pregnancy and childbirth costs by father to unmarried mother?	Yes	<i>Marriage and Affiliation Act 1967, s 12(1).</i> When an affiliation order has been made under this Act, the person adjudged to be the father may be ordered to pay such sum as the Magistrate thinks fit on account of the expenses of and incidental to the birth of the child, whether born alive or dead.	
16.24 Does the legislation provide for the payment of child support for children born outside of marriage?	Partial	<p><i>Marriage and Affiliation Act, 1967. s 12(2).</i> In the case of a child already born, application must be made before or within 6 years after the birth of the child.</p> <ul style="list-style-type: none"> • Unless the defendant since the birth of the child and within 2 years immediately preceding the application, has contributed to or made provision of the maintenance of the child. • Or has cohabited with the mother as man and wife, in which case the application may be made at any time after the expiration of the said period of 6 years. • If at any time the defendant has been absent from Western Samoa the period of his absence shall not be counted in computing the respective periods of 6 years or 2 years. 	The limitation on an application for child support to 6 years after the birth denies the shared responsibility of both parents throughout the child's life until the age of 18 is reached.
16.25 Does the legislation provide for equal inheritance laws?	Partial	<i>Administration Act 1975, s 44.</i>	Inheritance laws are equal in the formal law and apply to assets other than land. Customary law applies to customary land however and may discriminate against women.
16.26 Is there legislation requiring the court to apply CRC to domestic family law when relevant?	No		