

Samoa

1. Discrimination in the family

a) Overarching legal framework for marriage

Samoa (*Marriage Ordinance 1961*) establishes a minimum age for marriage of 16 years for women and 18 years for men; young men under 21 and young women under 19 must obtain the permission of guardians to marry (*Marriage Ordinance, Section 9*). The *Divorce and Matrimonial Amendment Act 2010* provides for no-fault divorce and allows for non-financial contributions to be considered within marital property disputes. While there are no specific provisions in Samoan law stating that women must freely consent to marriage, the country has ratified the *Convention on Consent to Marriage, Minimum Age for Marriage and Registration of Marriages 1964*.

b) Child marriage

Child marriage of children under 12 is specifically prohibited under the *Marriage Ordinance and Crimes Act of 2013* and marriages under the age of consent cannot be officially recognized (18 for boys, 16 for girls). The practice of child marriage in Samoa appears to be rare. However, there is cause for concern that the high rate of teenage pregnancy may promote child marriage for young women due to the stigmatization of childbirth outside of marriage (*CEDAW, 2010, p. 53*). Young women have limited access to reproductive health and planning services, especially in rural areas, including contraceptives. This lack of access has been linked with a high adolescent birth rate (39 births to adolescent women per 1 000 women), which in turn creates pressure for child marriage for young women who may become pregnant (*UNFPA, 2015, p. 8*).

c) Household responsibilities

There are no legal impediments that would prevent women from being considered the head of the household in Samoa or choosing where she resides regardless of her marriage status (*Constitution of the Independent State of Samoa, Articles 13 & 15*). In addition, the *Infants Ordinance 1961* provides men and women equal rights to custody and legal guardianship of children. Moreover, the *Maintenance and Affiliation Act 1967*, established that the responsibility for children born outside of marriage lies with the mother and not the father, although equal responsibility may be sought through the courts.

However, in practice, gender inequalities within the household in Samoa seem to correlate to women's disproportionate responsibility for work within the home. As in many places, gender role expectations within Samoan households hold that men deal mostly with work outside the house, while women are involved mainly in work that takes place within the home. Such work includes but is not limited to taking care of family members, cooking, cleaning and also some home-based businesses (*International Finance Corporation, 2010*).

d) Divorce

Samoa legal provisions regarding divorce provide for no fault divorce and for alimony, maintenance and custody arrangements. The Divorce and Matrimonial Causes Ordinance 1961 governs the distribution of property upon divorce and allows courts to take into consideration any unpaid or non-financial contributions that have been made to the family such as unpaid work caring for family members. In 2014, the Family Court Act consolidated proceedings over divorce and property, asset and custody questions. The Family Court Act is broadly gender-neutral and contains language actively promoting conciliation.

However, as the Samoan Law Reform Commission points out in a 2016 review of CEDAW legislative compliance, there is a provision within the law that specifically allows for wives to request lifetime maintenance awards from their husband which may reinforce the gender stereotypes of men as the main breadwinner and women as caretakers (p. 91). Additionally, the promotion of conciliation procedures for divorces has been highlighted as potentially inappropriate as it does not protect vulnerable women (Samoan Law Reform Commission, 2016, p. 93).

e) Inheritance

The Administration Act of 1975 governs inheritance rights in the absence of an individual will, and its language is gender neutral. However, in practice, customary law is often applied especially concerning land. Customary law holds that land belongs to the wider family, is administered by the family title holder or *matai* and cannot be individually parceled off. This is codified in the Alienation of the Customary Land Act 1965 which states that customary cannot be subdivided. According to the Samoa Gender and Investment Climate Reform Assessment, approximately 80% of land in Samoa is held in customary title (International Finance Corporation, 2010, p. 30). Thus, women tend to be discriminated against in relation to land inheritance. In relation to non-land assets, both women and men can inherit assets.

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Approximately 92% of Samoa's population is ethnically Samoan (CIA World Factbook). The traditional *fa'amatai* social structure continues to organize many of the social, economic, and political roles in Samoa. Women hold distinct roles, which influence how they are able to exercise their rights and shape their experiences: women may belong to their village by birth (*aualuma*) or may have married into a village (*faletua ma tausii*). The highest titled are *aualuma* women, who may be the unmarried, divorced and widowed women of the village, proceeded by wives of *matai* holders (*faletua* and *tausii*), followed by the wives of untitled men (*ava a taulelea*). Women who marry and move to their husband's family (*nofotane*) have much less status than those who stay with their own families, and may be more vulnerable in to abuse in the absence of support networks. The practice of banishing families by village councils can also have negative effects on women without title status (Samoan Law Reform Commission, 2016, p. 75).

These cultural norms influence the acceptability of women's involvement in different aspects of public life, decision-making and how different groups of women may or may not be able to exercise their formal rights (International Finance Corporation, 2010, p. 8). *Fa'a samoa* notions of gender and rank

do not automatically position women as inferior but rather, mean that women, men and *fa'afafine* (or third-gendered people) have distinct roles in society that are determined by rank, age, family and title status (CEDAW, 2012, p. 6). The roles played by different members of the community may thus not only reinforce negative stereotypes or inequalities but may also bring status to women and *fa'afafine*, and provide support networks of belonging (Samoan Law Reform Commission, 2016, p. 75).

Restricted Physical integrity

a) Violence against women

The 2013 Crimes Act covers a range of family violence, including violence against women. However, evidence suggests that the majority of victims of family violence appearing in Family Court are women, and that violence may in fact be rising. 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 (NHRI 2014, p. 14). Conservative interpretations of Samoan culture and Christianity may reinforce gender stereotypes and impede women from accessing justice in cases of violence. Advocates have also raised concerns about the ways that public attitudes negatively affect women's experiences with service providers, and that in many cases, women themselves may not be aware of their rights or able to access transportation or communications in order to report abuse (NHRI, 2014, p. 13). A culture of silence around violence against women has been linked with beliefs that domestic violence is a private matter that should be dealt with in the home (NHRI, 2014, p. 14).

b) Domestic violence

The passage of the Family Safety Act 2013 introduced laws against domestic abuse of women and children and included physical, verbal, sexual, and emotional abuse in its definition of domestic violence. The law allows for protection orders which victims can apply for against perpetrators of violence (only five other countries in the region have similar legislation in place). 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 focusing on intimate partner relationships. In 2014, the Family Court Act established a specialized court for dealing with domestic violence and other family-related matters. However, the Family Court Act 2014 empowers the court to utilize 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 that can involve offender's family, village *matai* and church leaders. The FGC may focus on the offender acknowledging the offence and finding ways for the offender to make amends (Samoan Law Reform Commission, 2016, p.11). Upon completion of the process, recommendations are made to the court which usually involve referring the perpetrator to a rehabilitation program (Samoan Law Reform Commission, 2016, p.11).

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 such as domestic violence. In addition, the Evidence Act 2015 introduces a provision which now permits hearsay evidence to be admissible in court where the

circumstances relating to the statement assure its reliability, and the maker of the statement is unavailable.

c) Rape

The Crimes Act 2013 brings about significant changes for the arrest and prosecution of sexual violence in Samoa. The law specifically recognized marital rape as an offence, and introduced trafficking offences. The Crimes Act also defines sexual violation, in the form of unlawful sexual connection with another person, as being without the consent of that person and no longer requires the act of penetration. The circumstances that do not amount to consent are also expressly set out. The Crimes Act 2013 also increases penalties for sexual assault, including for offences of attempted rape, incest and sexual assault of minors. Additionally, the new Evidence Act 2015 also largely dismisses the need for corroborated evidence in cases of sexual assault.

At the local level, there is a mixed picture in relation to how customary systems support or do not, women's access to justice in cases of sexual violence. For example, customary reconciliation efforts such as *ifoga* may mitigate the sanctions imposed by courts, which in some cases has reduced sentences for perpetrators (Samoa Law Reform Commission, 2016, p. 34).

d) Sexual harassment

Sexual harassment within the private sector is covered by the Labour and Employment Relations Act 2013, which enables employees to terminate their employment without sanctions in the case of harassment. The definition of harassment includes physical, sexual, verbal and mental harassment by other employees or the employer, and employees must be paid for wages earned in the case of leaving employment due to harassment. However, the act does not provide avenues for employees to seek direct action against another employee for harassment and the process of complaints for sexual harassment remains the same as for other working complaints (Samoa Law Reform Commission, 2016, p. 34).

Public sector workers are covered by the Public Service Act 2004 code of conduct which requires all employees to treat their colleagues with respect and not to engage in coercion or harassment and requires that employers create safe working environments for their employees. The Occupational Safety and Health Act 2002 also mandates a healthy working environment for all workplaces, while the Ombudsman Act 1988 offers a complaints procedure for those who experience human rights violations, including harassment (Samoa Law Reform Commission, 2016, p. 34). However, no systemic data are available about the extent which women face sexual harassment in the workplace (Samoa Law Reform Commission, 2016, p. 51). This contrasts to what is known about the educational environment, where there are concerns about the number of girls who are assaulted by their teachers. While the Education Act 2009 requires a safe learning environment, it does not establish specific sexual harassment procedures.

e) Female genital mutilation

There is no evidence to suggest that female genital mutilation is practiced in Samoa.

f) Abortion

Abortion is criminalised in Samoa in the the Crimes Act 2013, which states that abortion cannot be procured unless certified by a medical practitioner that the pregnancy threatens the mother's health, including mental health, and provided that the pregnancy is less than 20 weeks. Any person procuring or obtaining drugs or other methods of inducing miscarriage is subject to imprisonment of up to seven years. There are no exceptions for rape, incest or for minors, although persons judged by a medical practitioner to experience psychological symptoms may qualify, provided the pregnancy is under 20 weeks (Samoa Law Reform Commission, 2016, p. 47). Wealthier women may travel to neighbouring countries such as New Zealand to procure an abortion – an option not available to poorer women and those without access to healthcare (Samoa Law Reform Commission, 2016, p. 47). It is suspected that this law prevents women from obtaining safe abortions (Samoa Law Reform Commission, 2016, p. 51) and also contributes to unwanted pregnancies, young parenthood and early marriage (CEDAW, 2012). Views on abortion continue to be influenced by conservative interpretations of Samoan culture and Christianity (Samoa Law Reform Commission, 2016, p. 47).

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Trafficking has recently been criminalised in Part XIII of the Crimes Act 2013 where sex work is also criminalised, punishable with up to three years in prison, while solicitation is punishable by up to five years imprisonment. However, little information is available about the conditions of sex workers in Samoa or the extent to which trafficking is a problem (Samoa Law Reform Commission, 2016, p. 39). At the same time, nearly half of Samoa women lack access to quality reproductive and sexual healthcare and rural women in particular may face barriers in accessing family planning information and services (NHRI, 2014, p. 22).

3. Restricted Access to productive and financial resources

a) Secure access to land and assets

Legally, women and men in Samoa have the same rights to own, use and make decisions over land use. In relation to freehold land, the constitution establishes both the equal rights of women and men to land (Constitution of Independent Samoa, Part IX), marriage status and de facto partnerships do not confer property rights and thus land must be jointly registered to the wife and husband. However, in practice, customary law is often applied especially concerning land. Customary law holds that land belongs to the wider family, and is administered by the family title holder or *matai* and cannot be individually parcelled off. According to the Samoa Gender and Investment Climate Reform Assessment, approximately 80% of land in Samoa is held in customary *matai* title (International Finance Corporation, 2010, p. 30).

The Land and Titles Court has recognized equal rights for both male and female heirs to both *matai* titles and customary land. In relation to freehold land, the Land Titles Registration Act 2008 established these equal rights, without regard to marital status. However, in practice, selling land has not always required the signature of both spouses and thus has tended to disadvantage women (International Finance Corporation, 2010). Additionally, male heirs and lines may be seen to hold

superior rights over customary land, compared with their sisters, whose ability to acquire *matai* title and the right to use customary land are thus affected, and may differ based on their marital status.

Although customary land does not entail explicit rights to land use, the Village *Fono* Act gives the village council the right to make sure that land is used ‘for the betterment of the village’. It is not always clear how this is interpreted and is usually exercised in relation to uncultivated land. In contrast, *matai* titleholders generally make decisions about practices on the cultivated customary land for which they hold the title for. This may disadvantage women who are less likely to hold *matai* title. Moreover, it seems that customary land can be used for collateral and land title lease security is not always assured a problem compounded for women whose names may not appear on titles and wherein titles to freehold land may remain in the names of elder generations (International Finance Corporation, 2010, p. 48).

Land disputes also highlight inequalities, as they are largely settled within villages and not by statute, where customary land cannot be transferred to a woman or man that has married into the family, including upon death or divorce. However, in practice, widowed women usually have the option to remain on her husband’s customary land or to return to her family’s (International Finance Corporation, 2010). Thus women may be discriminated against as they are subject to accessing land through either their family *aiga* (extended family) or their husband’s family (Fana’afi, 1986).

b) Secure access to formal financial resources

There are no specific rights to opening or using bank accounts in Samoa’s Financial Regulations (i.e. the Financial Institutions Act 1996, the Banking Ordinance 1960, International Banking Act 2005, the Personal Properties Securities Act 2013). However, the Samoan constitution establishes freedom from discriminatory legislation in Section 15. However, the Financial Services Demand Side Survey Report highlighted that 47% of adult women are effectively unable to access the formal financial sector compared to men, although a slightly higher percentage of people who hold bank accounts in Samoa are women (40% of women, compared to men 38%). Rural and poorer women are much less likely to be able to access these services (Asian Development Bank, 2015).

Moreover, access to credit for all Samoans is limited, as the status of customary land makes it unclear whether this can be used as collateral, nor is there systemized credit information to facilitate lending. As banks require capital and collateral, women tended to fare poorer in terms of accessing credit and other financial services. Moreover, there have been reports that bank managers discriminate against female clients and thus further prevent women from accessing the formal financial sector (International Finance Corporation, 2010, p. 54).

c) Workplace rights

The Labour and Employment Relations Act 2013 specifically incorporates the principles of equality and non-discrimination into private sector employment legislation. The Public Service Act 2004 and public institution handbooks similarly govern public sector employment. In the case of private employment, discrimination is expressly prohibited, even while the specific provisions do offer concrete details about processes of hiring promotion and retention. At the same time, this Act formally establishes that women and men must be given equal pay for work of equal value. The Public Service Act states

that employment decisions must be based on merit and taken without discrimination (Sections 17 and 18), and that equal opportunity is a requirement for public employment.

Women are well represented in the public sector in Samoa, women's employment in executive and middle management positions within the public sector are nearly equal to men's. However, there are far less women than men at the upper appointed and elected levels of the public sector. Levels of formal employment (outside manual labour) are nearly equal between women and men, and Samoa has one of the highest levels of women's formal employment for the region (NHRI, 2014, p. 25). However, rural women tend to lack opportunities for paid work and are concentrated in the informal sector, which lacks workplace protections (International Finance Corporation, 2010).

Samoa women often own their own businesses, especially in urban areas, where Samoa's Small Business Enterprise Centre (SBEC) has indicated that women own 46% of small businesses (International Finance Corporation, 2010).

Public and private employers are required to provide both maternity and paternity leave, and those who have taken maternity leave are protected from dismissal and are guaranteed the right to return to an equivalent post. Concerning maternity leave, in the case of the private sector, maternity leave may be for a consecutive period of at least four weeks with full pay and two weeks without pay or for a consecutive period of at least six weeks on two-thirds pay of the female employee's normal salary at the time that she takes leave. The Public Service Act 2004 does not include maternity protections, paternity leave or parental leave; however, the Public Service Working Conditions and Entitlement Manual provides for at least four weeks maternity leave with full pay and two weeks maternity leave without pay or at least six weeks maternity leave at two thirds pay. Both sectors guarantee at least five days paid paternity leave (Government of Samoa, 2009).

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The *matai* title system discriminates against women's possibilities for employment within leadership positions and parliament, since a *matai* title is a requirement in some posts. Since women are less likely than men to hold a *matai* title, this contributes to their exclusion from the labour force. Women tend to therefore work in home-based manufacturing, wholesale and retail trade, and in education sectors, whereas men are concentrated in agriculture. Moreover, women's unpaid work burdens at home also limit their ability to take up paid work, as well as cultural and religious interpretations of what work is appropriate for women. Moreover, individual accumulation of wealth can be viewed somewhat negatively in Samoa society and wealthier individuals are expected to participate in the *fa'alavelave* system, which shares wealth within the church, community and family. *Fa'alavelave* obligations may reduce the amount of resources available for health, education and business activities and affect women in particular as they may already face significant demands on their time (in the form of unpaid work) and financial resources (International Finance Corporation, 2010 p. 4). Women may also face barriers to registering their businesses given that they are concentrated in informal sectors such as fishing and handicrafts, as well as in retail and tourism sectors (International Finance Corporation, 2010).

4. Restricted civil liberties

a) Citizenship rights

The Citizenship Act 2004 governs rights regarding nationality, whose language is gender neutral. Samoan women are conferred the same rights as men regarding their own nationality and there are no legal barriers for women to retain, change or acquire their nationality or to confer their nationality to their children or spouse, irrespective of their marital status (Samoan Law Reform Commission, 2016, p. 62). Article 15 in the Constitution of the Independent State of Samoa entitles women to equal protection under the law.

b) Voting

Women and men have equal voting rights at the national level (Electoral Act 1963, Section 19).

c) Political voice

Public service is legally based on merit (Public Service Act 2004, Section 18(2)(a)) and the requirement to hold *matai* title applies to both men and women (Electoral Act 1963, Section 5). However, in practice, while there are no formal gender-specific barriers to participating in political life women's political participation in Samoa has been ranked amongst the world's lowest, with less than 10% of parliamentarians being women (Samoan Law Reform Commission, 2016, pp. 56-57). A quota mandating that at least 10% of the members of the legislative Assembly be women was passed in 2013 and implemented in the 2016 elections (Constitution Amendment Act 2013). In the 2016 elections, four women were elected to the Assembly, and the quota allowed for the addition of an additional assemblywoman which increased the total number of assemblywomen to five members (Samoan Law Reform Commission, 2016, p. 58). In contrast, women's representation in government administrative and executive roles fare better than their elected counterparts, with their positions in leadership growing: nearly half of government agencies have female chief executives, while women make up at least 50% of assistant chief executive officers and 33% of top managers within state-owned enterprises (Samoan Law Reform Commission, 2016, pp. 57-58).

At the local level, the Village *Fono* Act 1990 enshrines that village administration be undertaken by the village councils (*Fono*) which are composed of *alii* (royalty) and *faipule* (*matai*), and those who do not hold *matai* title cannot participate in *fono*. The 2011 Census indicated that women held only 11% of *matai* titles, and further research has found that women make up only 5.5% of all village *matai* (Samoan Law Reform Commission, 2016, p. 55). Moreover, other research found that out of 275 villages, 21 villages expressly prohibit women from holding *matai* title, which affects women's ability to stand for elections within 16 of 41 constituencies. Even when villages do not prohibit women from holding *matai* title, women they may be discouraged informally from membership in village councils (Samoan Law Reform Commission, 2016, p. 55). Even in cases where women do hold *matai* title, they are still sometimes prevented from participating in village *fono* (Samoan Law Reform Commission, 2016, p. 16). Reports have found that women may choose to refrain from participating in local governments because they are uncomfortable with the role, afraid of negative sanctions or discouraged in a variety of ways from participating (Samoan Law Reform Commission, 2016, p. 55).

While not specifically recognized in statute, Village Women's Committees are sometimes consulted in *fono* affairs and may play a role in village administration (Samoa Law Reform Commission, 2016, p. 56). Further roles of *Sui o le nu'u* (SN) and *Sui Tama'ita'i o le Nu'u* (STN) are undertaken mainly by men and women respectively, with the former having responsibility to interface with national policymakers while the position of STN, usually filled by women, is paid at half the rate of the SN (Samoa Law Reform Commission, 2016, p. 6). Such issues highlighted further disparities between women and men even when legislation is ostensibly gender neutral, as in the case of the Internal Affairs Act 1995 (Samoa).

d) Access to justice

Samoa women are afforded equal rights and freedom from discrimination, including in relation to legal procedures, are expressed in Article 15 of the Constitution of the Independent State of Samoa. Additionally, the Ombudsman's office has the power to investigate any human rights abuses, promote awareness of rights and address discrimination such that women may take forward complaints through this office (Ombudsman (*Komesina o Sulufaiga*) Act 2013).

In practice, women's access to justice has been a significant issue raised in the Samoan context, in part because of the many previous barriers to women being able to seek out justice at local levels where they may be discouraged from disrupting the status quo.

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There are also legislative amendments requiring gender neutral language in all legislation (Revision and Publication of Laws Act 2008, Section 5d).

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