

Tuvalu



CEDAW Legislative Compliance Review

Legislative Compliance of Tuvalu

8.1 Overview

This Chapter examines and assesses Tuvalu's legislative compliance with CEDAW. Tuvalu ratified CEDAW on 6 October 1999 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 Tuvalu'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, Tuvalu has achieved full compliance with 21 of 113 indicators, partial compliance with 31 indicators and no compliance in relation to the remaining 61 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 Tuvalu (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 Tuvalu 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.

8.2 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 Tuvalu guarantees the rights and freedoms of citizens in most of the areas required by CEDAW. However, whilst the Constitution guarantees men and women 'freedom under the law,' it does not guarantee equal benefits or outcomes as required by CEDAW. The Constitution also does not 'deny the existence, nature or effect of cultural, social, civic, family or religious obligations' The Constitution of Tuvalu contains an anti-discrimination clause but it does not include sex as a protected ground. This means discrimination against women is lawful in Tuvalu and consequently, domestic laws which discriminate against women although non-complaint with CEDAW, are not in breach of the Constitution.
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. Tuvalu has not established such a mechanism.
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. Tuvalu has legislated against sexual assault.

The sexual assault laws, however, provide inadequate protection for the range of sexual violations perpetrated against girls and women. All sexual offences require penile penetration (except indecent assault which only attracts an inadequate maximum 5 year sentence). The requirement of penile penetration for most sexual offences excludes many of the ways in which women are sexually violated, and is not compliant with CEDAW. Violations perpetrated against girls under 15 are punished more seriously in Tuvalu, whilst the violation of an older girl is treated less seriously, again in non-compliance. Thus, the penalty for the 'defilement' of a girl aged under 13 is life imprisonment whilst defilement against a girl aged between 13 and 15 is 5 years. Although an assault against a young girl may have more serious consequences particularly if perpetrated by a person in a position of trust, the vast disparity between the sentences appears unjustified and perpetuates an erroneous assumption that it is less serious and harmful to assault a 'more mature' girl.

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 Tuvalu, in non-compliance with CEDAW, incest is an offence for a girl aged 15 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, Tuvalu 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 Tuvalu 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 defilement of a girl between the ages of 13 to 15. 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 not available as a defence in relation to girls under 16. This means in effect that the defence *is* available in relation to sexual assaults including rape on girls over 15 and this is non-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. Tuvalu, 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 available as a matter of entitlement unless the charge is murder.

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, Tuvalu 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. An offence of infanticide is contained in the Tuvalu criminal law legislation but it reduces a charge of murder to manslaughter, rather than replacing both murder and manslaughter with a separate offence and a corresponding less severe penalty. Further, the definition of infanticide is restricted to the effects of lactation and birthing. Such a view of the causes of infanticide has been largely discredited by research, which instead has linked such killings 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. Whilst there is a special measures provision in the Tuvalu Constitution for the advancement of 'any person or any group' it is unclear if it extends to the advancement of women. It is crucial to incorporate special measures for women because they are an equality measure with real potential to redress historical discrimination and achieve substantive equality for women.
11. Article 5 requires States Parties to abolish or modify customary practices that discriminate against women. In Tuvalu the Constitution provides for the protection of 'Tuvaluan values, culture and tradition' which in the absence of an anti-discrimination clause on the ground of sex, permits the continuation of customary practices which discriminate against 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 Tuvalu for sex workers in compliance with CEDAW. However, the Tuvalu legislation 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. Although Tuvalu has adopted a rigorous approach to the exploitation of girls under 13 with a penalty of life imprisonment,

its approach to girls over 13 and women who have been forced into sex work without their consent or trafficked to other locations both within the country or abroad attracts a penalty of only 2 years and is insufficient to comply with CEDAW's mandate.

13. Article 7 obligates States Parties to take all appropriate measures to eliminate discrimination in women's political and public lives. Universal suffrage and equal legal rights to political representation for women has been achieved in Tuvalu. However Tuvalu which, currently has no female members of parliament out of a total of 15 seats, and 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 governments in Tuvalu, 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. Women and men are treated equally under citizenship law in Tuvalu with one exception. A woman, but not a man, who has surrendered her Tuvaluan citizenship upon marriage to a national of another country, must prove the breakdown of her marriage to regain citizenship. Although this provision is intended to 'protect' women who have forgone their citizenship to relocate to their husband's place of residence, the provision is weighted with discriminatory assumptions. It assumes that women will relocate to a non-national husband's place of residence, but men will not.
- It also assumes that should the marriage break down a woman will be left without any means of support, but men will not. The opportunity to return to their place of origin should not be contingent on the breakdown of a marriage either for men or women but upon their own choice to return to their place of origin.
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. Education is compulsory for males and females in Tuvalu until the age of 15 ensuring that the education of males over females is not prioritised. However, since females do not participate equally in tertiary education in Tuvalu 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 which is required for compliance with CEDAW so as to ensure that girls are not discriminated against by educational institutions due to their pregnant status, does not exist in non-compliance with CEDAW.
 17. Article 11 obligates States Parties to eliminate discrimination in employment. Women in Tuvalu have many of the same rights in employment as men. However, there are a number of aspects of employment law in Tuvalu which discriminate against women and do not comply with CEDAW, including the absence of anti-discrimination provisions in the employment legislation and the restriction of women's employment choices by banning them from night work and working in mines. Although there are a number of exceptions, 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 Tuvalu offers more generous allowances than the minimum standards granted in the private sector. Although 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 comes closest with female civil servants entitled to 8 weeks of maternity leave on full pay and allows for an extended period of (unpaid) leave on production of a medical certificate. The private sector, however, only provides for 12 weeks leave on not less than 25% of the female worker's wage. Further, it is compulsory for women to take 6 weeks leave after childbirth denying them the option of returning to work if they choose. Finally, protection from dismissal ends upon the expiry of the approved maternity leave period, 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, Tuvalu has not introduced any specific health protection for pregnant workers. Breastfeeding mothers are provided with breaks of half hour duration twice daily. However, these conditions are insufficient to enable breastfeeding mothers to balance the needs of young children with the demands of work. Similarly, the absence of any state or employer funded childcare facilities in Tuvalu 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 Tuvalu 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 Papua New Guinea.
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 Tuvalu with a severe penalty of life 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 Tuvalu 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 Tuvalu 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. Tuvalu, 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. Tuvalu guarantees citizens 'freedom under the law' but this does not amount to a guarantee to women of equality before the law. Further, this freedom is subject to 'cultural, social, civic, family and religious obligations'. However, there are no legal barriers in Tuvalu 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.
26. The CEDAW Committee in General Recommendation 21 has nominated 18 as the minimum age of marriage for both males and females. Tuvalu mandates an equal marriageable age for males and females, however, it is 16 and below the recommended age of 18. In the marriage of minors the legislation privileges the consent of the father over the mother in non-compliance with CEDAW. In compliance with CEDAW the legislation does require the registration of marriages and bigamy is a criminal offence, however these laws are not applicable to customary marriages.
27. 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 Tuvalu whilst using fault based criteria (including adultery, desertion and cruelty) in an evidentiary capacity, can be achieved on the basis of 'complete breakdown' without attribution of fault and is therefore in partial compliance with CEDAW.
28. 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. Tuvalu *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 ‘resources of the defendant’ and ‘reasonableness’ 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.

29. In General Recommendation 21, which deals with equality in family relations, the CEDAW 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. Tuvalu does provide for the division of property after separation and divorce, however, the basis on which division is determined is what is ‘necessary and desirable’ and must not be inconsistent with custom. 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.
30. 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. Although Tuvalu has adopted the recommended standard of the best interests of the child as the paramount consideration in custody disputes after separation and divorce, an unmarried mother automatically loses custody of her child at the age of two years to the father (provided he admits paternity and wishes to have the custody of the child). The latter situation although intended to protect the inheritance rights of the children of unmarried parents may not represent the best interests of the child, and discriminates against mothers.
31. 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 Tuvalu do not enjoy equality in relation to the ownership, administration, enjoyment and disposition of property since patrilineal inheritance is given legislative status. Thereby giving men control of many aspects of land and property.
32. Article 16 requires that inheritance laws should apply equally to males and females. The Tuvalu Land Code governs inheritance law, specifying different rules for different islands based on custom. Generally, succession is along patrilineal lines and in a number of instances, sons are favoured over daughters in relation to both land and important resource rights such as fishponds.
33. A series of tables detailing Tuvalu’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 the Tuvalu’s legislation does or does not meet the indicator.

Tuvalu: 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 rights and freedoms to men and women equally including in the political, economic, social, cultural, civil or any other field?	Partial	<i>Constitution of Tuvalu 1986.</i> <ul style="list-style-type: none"> • s 11. Every person is entitled 'whatever his sex' to the fundamental rights and freedoms protected in the Constitution. • s 16 - 28. Life, personal liberty, slavery and forced labour, inhumane treatment, property rights, privacy of home and property, protection of law, freedom of belief, freedom of expression, freedom of assembly and association, freedom of movement, 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		
1.3 Does the Constitution contain an anti-discrimination clause on the ground of sex/gender?	No	<i>Constitution of Tuvalu 1986, s 27.</i> Although there is an anti-discrimination clauses sex is not included in the list of grounds of discrimination.	Sex discrimination is therefore legal.
1.4 Does the Constitution contain an anti-discrimination clause on the ground of marital status?	No		
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		
1.8 Does the breadth of the anti-discrimination clause encompass direct and indirect discrimination?	No		

ARTICLE 1: DEFINITION OF DISCRIMINATION AGAINST WOMEN ARTICLE 2: OBLIGATION TO ELIMINATE DISCRIMINATION			
INDICATOR	COMPLIANCE	RELEVANT LEGISLATION	COMMENTARY
1.9 Does the anti-discrimination clause bind public authorities and institutions?	No	<i>Constitution of Tuvalu 1986, s 38.</i>	Although the Constitution does extend to public authorities and institutions, the failure to include sex as a ground of discrimination makes this provision non-compliant with CEDAW.
1.10 Does the anti-discrimination clause bind any person, organisation or enterprise?	No	<i>Constitution of Tuvalu 1986, s 38.</i>	Although the Constitution does extend to any person, organisation or enterprise, the failure to include sex as a ground of discrimination makes this provision non-compliant with CEDAW.
1.11 Are sanctions imposed for breach of anti-discrimination provisions?	Partial	<i>Constitution of Tuvalu 1986, s 40 (1.)</i> The High Court may make any orders, issue any writs and give any directions that it thinks appropriate for enforcing or securing the enforcement of the constitution.	The absence of a sex anti-discrimination clause limits the effectiveness of these sanctions for women. However, the provision of sanctions for any denial of their fundamental rights and freedoms provides partial compliance with this indicator.
1.12 Are there specific domestic violence offences in the criminal law legislation (Penal Code)?	No	There is no specific domestic violence protection. Two offences in the <i>Penal Code [Cap 8] 1978</i> , could be used <ul style="list-style-type: none"> • s 237. Common assaults - 6 months imprisonment. • s 238. Assaults causing actual bodily harm - 5 years imprisonment. 	These provisions do not embrace the variety of situations that constitute domestic violence and fall well short of compliance. Low sentences also detract from the seriousness of domestic violence.
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?	No		No legislative power to exclude violent partner from home or person.
1.15 Is there mandatory prosecution for domestic violence offences?	No		

**ARTICLE 1: DEFINITION OF DISCRIMINATION AGAINST WOMEN
ARTICLE 2: OBLIGATION TO ELIMINATE DISCRIMINATION**

INDICATOR	COMPLIANCE	RELEVANT LEGISLATION	COMMENTARY
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	<i>Penal Code [Cap 8] 1978</i> . There are a range of sexual offences. <ul style="list-style-type: none"> • s 128. Rape - life imprisonment. • s 130. Attempted rape - 7 years. • s 133. Indecent assault - 5 years. • s 134. Defilement of a girl under 13 - life imprisonment. • s 135. Defilement of girl 13 - 15 - 5 years. 	Although rape and defilement of a girl under 13 is treated seriously, the light sentence for defilement of a girl 13-15 implies that a sexual assault is not as serious if the girl is older and is discriminatory. The absence of offences that include the range of violations experienced by women make the regime inadequate.
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>Penal Code [Cap 8] 1978, s 161</i> . Not necessary to prove the completion of the intercourse by the actual emission of seed but the intercourse shall be deemed complete upon proof of penetration only.	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>Penal Code [Cap 8] 1978, s 156(5)</i> . Any female person of or above the age of 15 years who with consent permits her grandfather, father, brother or son to have sexual intercourse with her (knowing him to be her grandfather, father, brother or son, as the case may be) shall be guilty of a felony - 7 years.	There is an offence of incest in the Code which means that women and girls over 15 can be charged with an offence. Therefore there is no compliance with this indicator. These offences are discriminatory because: <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 imbalance between girls and women and male relatives. Incest is typically perpetrated by men against girls and women in non-consensual and coercive circumstances.

**ARTICLE 1: DEFINITION OF DISCRIMINATION AGAINST WOMEN
ARTICLE 2: OBLIGATION TO ELIMINATE DISCRIMINATION**

INDICATOR	COMPLIANCE	RELEVANT LEGISLATION	COMMENTARY
1.19 Have the terms indecency, carnal knowledge, defilement and insulting modesty been removed from the criminal law legislation?	No	<i>Penal Code [Cap 8] 1978</i> . The terms defilement, insulting the modesty, carnal knowledge and indecency are used throughout the sexual assault offences.	These terms suggest that girls and women are spoilt or damaged by sexual offences. This is discriminatory and instead the offences should convey the invasion of the right to personal autonomy.
1.20 Is consent specifically defined in the criminal law legislation outlining coercive circumstances?	Partial	<i>Penal Code [Cap 8] 1978, s 128</i> . Consent is not established if it is obtained by force or by means of threats or intimidation of any kind, or by fear of bodily harm, or by means of false representations as to the nature of the act, or in the case of a married woman, by impersonating her husband.	This definition does not embrace the range of situations in which women may consent with coercion, e.g. in particular, a threat to a third party. A non-exhaustive list would achieve full compliance.
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 the requirement for corroboration?	No		
1.23 Is there a legislative prohibition on the requirement to provide 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.	No	<i>Penal Code [Cap 8] 1978, s135</i> . It is defence to a charge of defilement of girl between 13 and 15 that the person charged had reasonable cause to believe and did in fact believe that the girl was of or above the age of 15 years.	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 relation to girls under 13, the defence in relation to the defilement of girls between 13-15 places the onus on the minor to reveal her age rather than on the perpetrator to ascertain her age. This is discriminatory.
1.25 Is a defence of consent unavailable in relation to a victim under 18?	No	<i>Penal Code [Cap 8] 1978, s 134, s 135</i> . Consent is not a defence for girls 15 and under.	Compliance with the indicator requires that consent is not a defence in relation to any girl under 18.

ARTICLE 1: DEFINITION OF DISCRIMINATION AGAINST WOMEN ARTICLE 2: OBLIGATION TO ELIMINATE DISCRIMINATION			
INDICATOR	COMPLIANCE	RELEVANT LEGISLATION	COMMENTARY
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 Tuvalu 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 there is risk to victim?	No	<i>Island Courts Ordinance [Cap 3] 1965.</i> No specific provision for victims of sexual assault.	
1.29 Are there minimum sentences for sexual offences?	No	The sentences for all sexual offences designate maximum but not minimum sentences.	The failure to designate minimum sentences means that sexual offences can be given low sentences which do not reflect their gravity.
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?	Partial	<i>Penal Code [Cap 8] 1978, s 199.</i> Where a woman by any wilful act or omission causes the death of her child of under 12 months in circumstances where the balance of her mind was disturbed because she had not fully recovered from the effect of giving birth to the child or by reason of the effect of lactation and the offence would have amounted to murder, she shall be guilty of infanticide, and be dealt with and punished as if she had been guilty of manslaughter of the child.	Murder can be reduced to manslaughter, however, this is still an offence with sentence of life imprisonment. Infanticide should replace both murder and manslaughter and carry a light sentence.

**ARTICLE 1: DEFINITION OF DISCRIMINATION AGAINST WOMEN
ARTICLE 2: OBLIGATION TO ELIMINATE DISCRIMINATION**

INDICATOR	COMPLIANCE	RELEVANT LEGISLATION	COMMENTARY
1.33 Does the definition of infanticide include environmental and social stresses?	No	As in 1.32.	Research suggests that women who kill their children do so in part because of the environmental and social stresses of raising children. Basing infanticide solely on the perceived hormonal and biological weaknesses that women suffer during childbirth and lactation does not comply 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?	No		A Ministry of Women's Affairs has been established in the Ministry of Home Affairs and Rural Development. The Ministry has some powers to monitor discriminatory law and policy but without legislative authority it is susceptible to removal in times of political or economic upheaval.

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?	Partial	<i>Constitution of Tuvalu 1986, s 27(3)(f)</i> . Allows affirmative action 'by which any person or any group may be given favourable treatment or unfavourable treatment which, having regard to the nature of the person and special circumstances is reasonably justifiable in democratic society having a proper respect for human rights and dignity'.	It is unclear whether the affirmative action clause can be used to advance the position of women. Sex is not a protected ground and arguably sex discrimination is lawful. However, special measures to advance the position of men are also lawful under this line of argument. Full compliance requires the legislation to expressly provide special measures for women and girls.
4.2 Are special measures exempt from discrimination on the basis of sex, marital status, sexual orientation, disability and HIV status?	No		

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 Tuvalu 1986</i> , <ul style="list-style-type: none"> s 4(3). The Constitution is to be interpreted to achieve the aims of a fair and democratic government 'in the light of reason and experience of Tuvaluan values'. s 29(1). Tuvalu is an Independent State in part based on Tuvaluan values, culture and tradition (4) It may therefore be necessary in certain circumstances to regulate or place some restrictions on the exercise of those rights, if their exercise (b) may directly threaten Tuvaluan values or culture. 	The Constitution expressly recognises custom. In the absence of a guarantee that custom does not have precedence over equality between men and women and in the absence of sex as a ground of discrimination, Tuvaluan values that discriminate against women are constitutional.

ARTICLE 6: EXPLOITATION OF WOMEN			
INDICATOR	COMPLIANCE	RELEVANT LEGISLATION	COMMENTARY
6.1 Is the act of soliciting decriminalised?	Yes		No offence for soliciting for females.
6.2 Is aiding and abetting consensual acts of soliciting decriminalised?	No	<p><i>Penal Code 1965.</i> Range of offences:</p> <ul style="list-style-type: none"> • s 145. Offence for male person to aid and abet prostitution - misdemeanour. • s 146. Offence for female person to aid and abet prostitution - misdemeanour. • s 148. Offence to operate a brothel - misdemeanour. 	The legislation criminalises living off sex work or operating brothels. Although applicable to both males and females, criminalising those who aid and abet prostitution does not assist women who work in this field to carry out their work in a non-exploitative and protected environment.
6.3 Is it a criminal offence to procure any woman without consent or any girl under 18?	Partial	<p><i>Penal Code 1965,</i></p> <ul style="list-style-type: none"> • s 136(a). Procuration of girl under 18 - 2 years imprisonment. • s 137. Procuration using drugs, threats or false representation - 2 years imprisonment. • s 138. Householder permits defilement of girl under 13 - life imprisonment. • s 139. Householder permits defilement of girl 13-15 - 2 years imprisonment. • s 140-142. Detain in a brothel against will and selling or hiring out of girls for prostitution by parents or any other person - 2 years imprisonment. 	Although providing some protection from exploitation, the offences are not fully compliant because the penalties, except for girls under 13, are low.
6.4 Does employment legislation including occupational health and safety legislation protect sex workers?	No		
6.5 Is the trafficking of women prohibited?	Partial	<p><i>Penal Code 1965, s 136(b)-(d).</i> An offence to procure any woman or girl to leave Tuvalu, with intent that she may become an inmate of or frequent a brothel elsewhere; or to leave her usual place of abode in Tuvalu (such place not being a brothel), with intent that she may for the purposes of prostitution become an inmate of or frequent a brothel either in Tuvalu or elsewhere - 2 years imprisonment and requires corroboration either by another person or some material evidence implicating the accused.</p>	The legislation provides some protection against the trafficking of women, however, compliance is partial because: <ul style="list-style-type: none"> • The penalties are low. • Corroboration is required, placing an unreasonable burden on victims.
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	<i>Constitution of Tuvalu, 1986, s 90, s 91.</i>	
7.2 Is there equal eligibility for political representation?	Yes	<i>Constitution of Tuvalu, 1986, s 94.</i>	
7.3 Is there legislative provision for minimum quotas of women in Parliament?	No		Despite equal eligibility to enter parliament, no women have held or currently hold any of the 15 seats in the Tuvalu 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 to equal participation.
7.5 Is there legislation (other than Charitable Societies legislation) enabling women to register and mobilise to promote the advancement of women without political interference?	No		<i>Co-Operative Societies Ordinance</i> 1952 enables societies to register, however, the aims of such societies must be economic.

ARTICLE 8: INTERNATIONAL REPRESENTATION AND PARTICIPATION

INDICATOR	COMPLIANCE	RELEVANT LEGISLATION	COMMENTARY
8.1 Do women have an 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>Constitution of Tuvalu 1986, s 44.</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 then there is full compliance with this indicator.	Partial	<i>Constitution of Tuvalu 1992, s 46.</i> Wife's nationality is not changed by marriage but if a woman forgoes her nationality because of marriage (not possible to have dual citizenship) she must prove her marriage has irretrievably broken down to regain it. Men cannot regain their citizenship on this basis.	To be compliant with this indicator, the marriage of a woman to a non-national should not affect her nationality. Although the legislation is intended to 'protect' women who have forgone their citizenship to relocate to their husband's place of residence, it contains discriminatory assumptions including that a woman will move to her husband's residence (and not men to their wives') and make her return to her place of origin contingent on marriage breakdown rather than her free choice.
9.3 Do both spouses have equal rights to residency, citizenship and employment when spouse is a non-national?	Yes	<i>Constitution of Tuvalu 1992, s 46.</i> Any person who marries a Tuvaluan citizen is entitled to citizenship.	
9.4 Do both spouses have an equal right in determining nationality of children?	Partial	<i>Constitution of Tuvalu 1992,</i> <ul style="list-style-type: none"> • s 45. Equal rights except if at the time of birth • s 45(a). Father was a citizen of a country with which Tuvalu was at war; and • s 45(b). The birth occurred in a place in Tuvalu occupied by that country. • s 45(5). In the case of a person who was born out of wedlock, a father shall be read as a reference to his mother. 	This provision discriminates against Tuvalu women who might have children in a range of possible scenarios (even rape) in a country with which Tuvalu is at war including Tuvalu itself during occupation.
9.5 Do women have an equal right to obtain passport?	Yes	<i>Passports Act [Cap 79].</i>	

ARTICLE 10: EDUCATION

INDICATOR	COMPLIANCE	RELEVANT LEGISLATION	COMMENTARY
10.1 Does the legislation guarantee women and girls have equal access to education?	Yes	<i>Education Act 1978, s 3.</i> Educational and training opportunities are to be provided to all children.	Full compliance with CEDAW requires that the legislation explicitly guarantees equal access to education for girls and women. In compliance with the indicator the legislation guarantees educational and training opportunities are to be provided to <i>all</i> children.
10.2 Is there legislation creating special for the advancement of women in education?	No		
10.3 Is there compulsory primary education for girls and boys?	Yes	<i>Education Act 1978, s 30.</i> Compulsory education for boys and girls at primary level.	
10.4 Is there compulsory secondary education for girls and boys?	Yes	<i>Education Act 1978, s 30.</i> Compulsory education for boys and girls at secondary level until age 15.	
10.5 Is family life (reproductive and sexual health) 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		
11.2 Are there special measures provisions for the advancement of women in employment?	No		

ARTICLE 11: EMPLOYMENT

INDICATOR	COMPLIANCE	RELEVANT LEGISLATION	COMMENTARY
11.3 Do women enjoy equal conditions of work including leave, superannuation and Workers Compensation?	Partial	<ul style="list-style-type: none"> • <i>Workmen's Compensation Ordinance [Cap 83] 1949, s 2.</i> Excludes outworker and a member of employer's family dwelling in his house. • <i>Employment Ordinance [Cap 84] 1966, s 2.</i> Worker defined by a limited list of categories which expressly excludes casual workers and domestic servant. Domestic servant includes the domestic services of any private dwelling house. • <i>Employment Ordinance [Cap 84] 1966, s 2.</i> Family is defined as 'wife of a worker and children under 14.' This definition is relevant in the <i>Employment (Housing Standards) Regulations s 5</i> made pursuant to the Ordinance in circumstances where an employer supplies housing. The regulations designate minimum standards for the housing of a worker and family. • <i>National Provident Fund Act, 1986.</i> Women can withdraw their savings at any time of unemployment but men can only withdraw their savings at 45. 	As many women work in these capacities the definition of worker to encompass these types of work is discriminatory and leaves many women without the minimal protections of other workers. The discriminatory definition of family excludes the possibility of a woman and her husband and family requiring housing. Although intended to protect women and their dependants this means women's savings can be used to meet the family needs but not men's.
11.4 Does the legislation provide sexual harassment protection from employers and co-workers?	Partial	No specific protection from sexual harassment in the <i>Employment Ordinance [Cap 84] 1966</i> . However, in limited circumstances common nuisance could be used. Common nuisance makes an offence 'whoever, intending to insult the modesty of any woman or girl, utters any word, makes any sound or gesture, or exhibits any object, intending that such word or sound shall be heard, or that such gesture or object shall be seen, by such woman or girl, or whoever intrudes upon the privacy of a woman or girl by doing an act of a nature likely to offend her modesty'.	
11.5 Does the definition of sexual harassment include breadth of unwanted behaviours?	No		Common nuisance does not encompass a comprehensive meaning of sexual harassment.
11.6 Does the legislation contain an equal pay provision?	No		No legislative guarantee of equal pay.
11.7 Does the legislation contain pay equity provisions?	No		
11.8 Does the legislation provide for an equal retirement age?	No		No legal guarantee of equal retirement age.

ARTICLE 11: EMPLOYMENT

INDICATOR	COMPLIANCE	RELEVANT LEGISLATION	COMMENTARY
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	<p><i>Employment Ordinance [Cap 84] 1966, s77, 78, 79.</i></p> <ul style="list-style-type: none"> • s 77. Women are prohibited from working 6pm to 6 am. Exceptions: raw materials or materials in course of treatment which are subject to rapid deterioration emergency, responsible position, nursing caring for sick or health and welfare work, in a cinema, hotel bar restaurant and club, pharmacist. The Minister can provide further exceptions. • s 78. Women shall not be employed in underground work in any mine except in management and health and welfare services. • s 79. The Minister may by order from time to time suspend the prohibition of the employment of women during the night when in case of serious emergency the public interest so demands. 	To be compliant with this indicator, there should be no restrictions on a woman's choice of employment. The <i>Employment Ordinance</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 health protection during pregnancy?	Partial	<p><i>Employment Ordinance [Cap 84] 1966, s 107.</i></p> <p>A general duty to provide for the medical care of workers.</p>	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	<ul style="list-style-type: none"> • <i>Employment Ordinance 1966 [Cap 84], s 80.</i> Upon production of a medical certificate up to twelve weeks maternity leave on not less than 25% of the wages including a period of at least six weeks' <i>compulsory</i> leave after her confinement. • General Administrative Orders 1985. Public Service Act 1979. Must cease duty prior to the ninth month of pregnancy and is given leave not less than 50 days and not more than 60 days. This is on full pay. Upon production of a medical certificate leave can be extended. Leave is granted without pay. 	Although there is provision for paid maternity leave of 12 weeks, the rate of 25% of pay is insufficient to meet women's financial needs during this time. The compulsory period of leave while intending to protect women restricts their choice to determine their own leave.
11.12 Does the legislation provide protection from dismissal because of pregnancy or maternity leave?	Partial	<ul style="list-style-type: none"> • <i>Employment Ordinance 1966 [Cap 84], s 81.</i> Cannot be dismissed during time of approved leave (12 weeks). • General Administrative Orders 1985 issued pursuant to <i>Public Service Act 1979</i>. Cannot be dismissed during time of approved leave. 	No opportunity is given to women to spend a longer period of time caring for young children without the loss of their job. Provision for extended unpaid leave should be provided to

ARTICLE 11: EMPLOYMENT

INDICATOR	COMPLIANCE	RELEVANT LEGISLATION	COMMENTARY
			enable women to have the choice to spend longer with their children if they wish.
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?	Partial	<i>Employment Ordinance [Cap 84] 1966, s 80(3).</i> Half an hour twice a day during work hours.	Insufficient breaks for women to realistically return to work if they are breastfeeding.

ARTICLE 12: HEALTH CARE AND FAMILY PLANNING

INDICATOR	COMPLIANCE	RELEVANT LEGISLATION	COMMENTARY
12.1 Do women have access to safe and legal abortion facilities?	No	<i>Penal Code [Cap 8] 1978, s 214.</i> Abortion is a criminal offence with a sentence of life imprisonment. An exception if for life 'in good faith for the purpose of preserving the life of the mother'.	<p>These provisions are discriminatory to women because:</p> <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 (life imprisonment) fails to account for the reasons why women may choose to abort. • Note there is an exception to preserve the life of the mother.

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		There is no social security system in Tuvalu.
13.2 Do women have an equal right to receive bank loans, mortgages and financial credit?	Yes		No legal barrier to receiving 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 participation 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 Tuvalu live in rural communities and it is crucial that Tuvalu 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?	No	<i>Constitution of Tuvalu 1986, s 10.</i> All citizens are entitled to freedom under the law but the Constitution does not deny the existence, nature or effect of 'cultural, social, civic, family or religious obligations.	Freedom under the law does not equate to equality before the law. Further, this freedom is subject to obligations that may discriminate against women such as cultural or family obligations.
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		There is 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		There is 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?	No	<i>Tuvalu Lands Code 1962, s 9(i).</i> If an owner has more than 1 spouse then the eldest son of the first spouse will be the administrator, or if there is no son by the first spouse but only daughters then the eldest daughter will be the administrator. A female administrator may if she wishes allow a son by a subsequent spouse to be the administrator: eldest son first and if only daughters then daughter.	These provisions favour sons and are discriminatory.
15.6 Is there legislation that nullifies all contracts and instruments that limit women's legal capacity?	No		There are no specific legislative provisions with the 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?	Partial	Equal in most circumstances, however, <i>Constitution of Tuvalu 1992, s 46.</i> Wife's nationality is not changed by marriage but if a woman forgoes her nationality because of marriage (not possible to have dual citizenship) she must prove her marriage has irretrievably broken down to regain it. Men cannot regain their citizenship on this basis.	Women are denied domicile in their country of origin by this provision. Only if their marriage breaks down can they return to their place of origin. Women should be able to regain citizenship (and domicile) automatically if they renounce any other citizenship.

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?	Partial	<i>Matrimonial Proceedings Act [Cap 21] 1985, s 8(b)</i> . If the marriage has been induced by duress the injured party to the marriage is, subject to Part IV, entitled to a divorce.	The legislation enables a woman to divorce if the marriage has proceeded without full and free consent but full compliance would require the marriage be voided in such circumstances.
16.2 Does the legislation allow marriages to be nullified if they took place under force, duress or undue influence?	Partial		As above.16.1
16.3 Is there an equal minimum age of 18 for marriage?	Partial	<i>Marriage Ordinance [Cap 29] 1968, s 5. 16</i> and over for male and female.	The age for marriage is equal but less than the CEDAW recommended age of 18.
16.4 Is there a legislative prohibition on child marriage?	Partial	<i>Marriage Ordinance [Cap 29] 1968, s 5</i> . Marriage solemnised between persons under 16 is void.	Full compliance with CEDAW would not recognise marriage under 18.
16.5 Does the legislation require registration of marriage in an official registry?	Yes	<i>Marriage Ordinance [Cap 29] 1968, s 17</i> .	
16.6 Does the legislation prohibit bigamy?	Partial	<i>Penal Code [Cap 8] 1978,</i> <ul style="list-style-type: none"> • s 163. Bigamy an offence however • s 163(2) customary marriage an exception. 	Bigamy is discriminatory to women and therefore custom that protects its practice is also discriminatory.
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 marriage of minors?	No	<i>Marriage Ordinance [Cap 29] 1968, s 7</i> . Anyone under 21 who wishes to be married must have written consent of father, or if dead, absent or of unsound mind, the mother.	This provision does not treat mothers and fathers equally and is reflective of the notion that the father is the head of the family.

ARTICLE 16: PERSONAL AND FAMILY LAW

INDICATOR	COMPLIANCE	RELEVANT LEGISLATION	COMMENTARY
16.9 Are both spouses equal in ownership, acquisition, management, administration and enjoyment and disposition of property?	No		The legislation does not guarantee equality to both spouses in ownership, acquisition, management, administration, enjoyment and disposition of property. Property rights are largely determined by custom which has constitutional status and where women are often discriminated against in terms of ownership and access to land use.
16.10 Does the legislation provide for a maintenance and custody order during separation based on need?	Partial	<p><i>Maintenance (Miscellaneous Provisions) Ordinance [Cap 4] 1973.</i></p> <ul style="list-style-type: none"> • s 3. Can award maintenance if there is a 'legal or customary obligation' to do so. • s 4. The court shall have 'regard to all the circumstances and in particular the resources of the defendant' and order 'such sums of money that the court thinks reasonable' provision of 'shelter and care'. 	Although there is provision for maintenance during separation, it is not based on criteria such as respective earning capacity and means, needs of both parties and other commitments. The absence of such criteria to guide judicial discretion leaves women without a guarantee of maintenance based on need.
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		

ARTICLE 16: PERSONAL AND FAMILY LAW

INDICATOR	COMPLIANCE	RELEVANT LEGISLATION	COMMENTARY
16.12 Does the legislation provide an order for the restitution of conjugal rights? If the legislation does not provide such an order then there is full compliance with this indicator.	Yes		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.
16.13 Does the legislation provide for no fault divorce?	Partial	<i>Matrimonial Proceedings Act [Cap 21] 1985.</i> <ul style="list-style-type: none"> • s 8, s 9. The only ground for divorce is that the marriage has completely broken down. A range of criteria can be used to establish complete breakdown which are fault based. • s 12. The court may refuse divorce if adequate arrangements not made or will be made for the welfare of child. 	Although the criteria are fault based they have evidentiary weight only and are not necessary to successfully obtain a divorce.
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.	No	<i>Matrimonial Proceedings Act [Cap 21] 1985,</i> s 10. The court must certify no attempt to reconcile is likely to succeed otherwise 3 month adjournment to allow parties to settle their differences.	To be compliant with this indicator, the legislation should not place 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 places a duty on the court to promote reconciliation and therefore is in non-compliance, with the indicator and with CEDAW.

ARTICLE 16: PERSONAL AND FAMILY LAW

INDICATOR	COMPLIANCE	RELEVANT LEGISLATION	COMMENTARY
16.15 Does the legislation provide for an equal division of property after divorce including recognition of unpaid contribution, future needs, and future earning capacity?	Partial	<i>Matrimonial Proceedings Act [Cap 21] 1985, s 10, s 13</i> 'Necessary and desirable' and 'shall not be unreasonable or inconsistent with any other law including Tuvaluan custom.	Although property division is included in the legislation there is no criteria that recognises the contribution of both parties including financial and non-financial. It is also subject to customary law, regardless of whether it discriminates against women.
16.16 Does the legislation provide for the payment of child support after divorce based on need?	Partial	<i>Matrimonial Proceedings Act [Cap 21] 1985, s 10, s 13</i> 'Necessary and desirable' and 'shall not be unreasonable or inconsistent with any other law including Tuvaluan custom.	As above 16.10
16.17 Does the legislation provide for maintenance for the ex-spouse based on commitments, income, earning capacity, and assets?	Partial	<i>Matrimonial Proceedings Act [Cap 21] 1985, s 10, s 13</i> 'Necessary and desirable' and 'shall not be unreasonable or inconsistent with any other law including Tuvaluan custom.'	As above 16.10
16.18 Is custody and access to children based on the best interests of the child regardless of relationship of parent?	Partial	<p><i>Custody of Children Ordinance [Cap 20] 1974.</i></p> <ul style="list-style-type: none"> s 3. Custody to be awarded 'having regard to the welfare of the child and the conduct and wishes of the mother and father' subject to <i>Native Lands Ordinance [Cap 22] 1957.</i> s 3(3). Welfare of the child is the first and paramount consideration. <p><i>Native Lands Ordinance [Cap 22] 1957</i></p> <ul style="list-style-type: none"> 20(1). If in any island a single woman is delivered of a child the court may summon the woman and 'all other such natives as it may think fit' and enquire into the paternity of the child. s 20(2) (i). If the father being a native accepts the child as being his after reaching the age of 2 it shall reside with the father or his relations and shall in accordance with native customary law inherit land and property from his father in the same way as the father's legitimate children. 	<p>These provisions make the welfare of the child paramount, which is in full conformity with this indicator. However, the reference to conduct implies fault is a factor and it is subject to the <i>Native Lands Ordinance [Cap 22] 1957</i> which contains discriminatory provisions.</p> <p>This is discriminatory as it does not award custody on the basis of the best interests of the child but protects a paternal right to custody.</p>

ARTICLE 16: PERSONAL AND FAMILY LAW

INDICATOR	COMPLIANCE	RELEVANT LEGISLATION	COMMENTARY
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.
16.20 Do women have an equal right to guardianship, wardship, trusteeship and adoption?	Partial	<i>Adoption of Children Act 1985, s 2.</i> Equal right to adopt and be guardian but applies only to children who are not natives and adoptive parents who may not be natives and in circumstances when customary procedure of native adoptions are 'inappropriate'. <i>Native Lands Ordinance [Cap 22] 1957, s 16.</i> The court shall adjudicate on all cases brought before it concerning native adoptions and the conveyances of land which such adoptions may entail.	These provisions defer to custom without any safeguards as to whether the custom is discriminatory to women.
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 an order to establish parentage?	Partial	<i>Native Lands Ordinance 1957, s20.(1).</i> If in any island a single woman is delivered of a child, the court may summon before it that woman and all other such natives as it may think fit and may enquire into the paternity of the child.	Although there is a process for establishing paternity it is insufficient to ensure a thorough investigation.
16.23 Does the legislation provide for a contribution to pregnancy and child birth costs by father to unmarried mother?	No		

ARTICLE 16: PERSONAL AND FAMILY LAW

INDICATOR	COMPLIANCE	RELEVANT LEGISLATION	COMMENTARY
16.24 Does the legislation provide for the payment of child support for children born outside of marriage?	Partial	<p><i>Maintenance (Miscellaneous Provisions) Ordinance [Cap 4] 1973.</i></p> <ul style="list-style-type: none"> • s 3. Can award maintenance if there is a 'legal or customary obligation' to do so. • s 4. The court shall have 'regard to all the circumstances and in particular the resources of the defendant' and order 'such sums of money that the court thinks reasonable' for the provision of 'shelter and care'. <p><i>Native Lands Ordinance 1957.</i> Applies only to natives-</p> <ul style="list-style-type: none"> • s 20(2 (ii)). If no acknowledgement of paternity of the child, but the court is satisfied that he is the father of the child, it may order that the child shall live with the mother and may transfer to the child title to any such portion of land or other property owned by the father as necessary for the maintenance and support of the child; or • s 20(2 (iii)). If there is no land which will be of assistance in maintaining the child, monetary maintenance not exceeding \$2 per month or maintenance by supply of foodstuffs until such time as the child reaches the age of 21. 	The criteria afforded to the court under the <i>Native Ordinance</i> to determine child support is based on what is 'necessary' and, if there is no land, then monetary assistance of no more than \$2 or foodstuffs may be awarded. The level of support should be based on the needs of the child and the respective financial resources and capacities of the two parents.
16.25 Does the legislation provide for equal inheritance laws?	No	<p><i>Native Lands Ordinance 1956, s 15.</i> The court shall be a court of probate in respect of native wills and shall adjudicate in accordance with native customary law on all cases arising from the administration and partition of native estates.</p> <p><i>Tuvalu Lands Code 1962.</i> Made pursuant to the <i>Native Lands Ordinance 1956, s 28.</i></p> <ul style="list-style-type: none"> • s 9(i). The issue of the first spouse will receive more lands than the issue of the second or subsequent spouses. However if some of the children of the owner will suffer hardship by such a distribution then the lands court may distribute the lands amongst the children irrespective of which spouse they are from. 	These provisions advantage the children of first spouses over second spouses and give more to the eldest son than to daughters. The provisions are discriminatory as they do not provide equally for males and females. These laws discriminate against women as they favour paternal lines and sons over daughters in some circumstances.

ARTICLE 16: PERSONAL AND FAMILY LAW

INDICATOR	COMPLIANCE	RELEVANT LEGISLATION	COMMENTARY
		<ul style="list-style-type: none"> • s 9(ii). In the distribution of an estate between the sons and daughters of an owner, the share of the eldest son shall exceed that of his brothers and the shares of share of sons shall exceed the shares of daughters. If there are no sons then the share of the eldest daughter will exceed that of her sisters. • s 9(4)(c). If he dies issueless and he has no brothers and sisters and is intestate then the lands will be distributed to his paternal next-of-kin. • s 14. A husband whose wife has lived continuously with him for not less than 3 years immediately preceding his decease, and by whom he has no children, must make adequate provision for the said wife during her lifetime. On the death or the remarriage of the said wife the lands and pits given for her support must revert to the husband's family. 	
16.26 Is there legislation requiring the court to apply CEDAW and CRC to domestic family law when relevant?	No		