

# Solomon Islands



CEDAW Legislative Compliance Review



# Legislative Compliance of Solomon Islands

## 8.1 Overview

This Chapter examines and assesses the Solomon Island's legislative compliance with CEDAW. The Solomon Islands ratified CEDAW on 6 May 2002 obliging it to work towards the modification of its constitution and legislation to accord with the articles of CEDAW. However, it is recognised that the Solomon Islands is at the beginning of its compliance process and that legislative compliance will be achieved through gradual and incremental change. The assessment of the Solomon Island'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, the Solomon Island's has achieved full compliance with 23 indicators, partial compliance with 33 indicators and no compliance in relation to the remaining 57 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 the Solomon Islands (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 Solomon Islands is shortly to debate a new Constitution which will grant women equal legal rights in a wide range of circumstances. This includes a minimum quota for women in parliament, a comprehensive non-discrimination clause and the establishment of a Human Rights Commission.

It should be noted that the Solomon Islands 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 the Solomon Islands guarantees the rights and freedoms of citizens in most of the areas required by CEDAW 'regardless of sex', but subject to the public interest. Although substantive equality between men and women and the right to the highest attainable standard of physical and mental health are not guaranteed, the inclusion of a comprehensive anti-discrimination clause that extends to indirect as well as direct discrimination provides a mechanism for the achievement of equality. Discrimination against women on the grounds of sexual orientation, disability, HIV and marital status, however, are not protected.
2. Articles 2 and 3 together mandate the establishment by legislation of national bodies and machinery to monitor the implementation of law and policy to foster the advancement of women. The Solomon Islands to date has not instituted such a mechanism and is non-compliant with CEDAW.
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. The Solomon Islands has legislated against sexual assault. Sexual assault laws in the Solomon Islands however provide inadequate protection for the range of sexual violations perpetrated against girls and women. 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. Indecent assault is used to cover all offences that do not involve penile penetration and imposes a sentence of only 5 years, regardless of the severity of the assault. Consequently, whilst penile rape is seriously regarded, other sexual violations against women are not. The inclusion of different categories of rape for girls aged under 13 and girls aged 13 to 15 imposing vastly different sentences (life imprisonment for the former and 5 years for the latter) 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 the Solomon Islands, 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, the Solomon Islands 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 the Solomon Islands 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 available as a defence for girls over 15 and 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. The Solomon Islands, however, does not have mandatory prosecution or minimum sentences for sexual assault offences. In addition, the legislation specifically provides for custom 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 'serious'.

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, the Solomon Islands has not yet incorporated domestic violence offences into its criminal laws. This is required for compliance with CEDAW. A restraining order, however, is available to protect women (although not unmarried women) from the threat of violence in their homes, with wide powers of arrest if the order is breached.
  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 Solomon Islands' criminal 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. The Solomon Islands has not incorporated special measures provisions into its constitution, nor enacted legislation for the advancement of women. The lack of special measures is detrimental 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 the Solomon Islands the Constitution gives constitutional status to customary law permitting its observance in a range of situations including land, marriage, divorce and other personal laws, all of which have gendered impacts on women. However, customary law cannot be inconsistent with the Constitution and the presence of anti-discrimination provisions leaves women in the Solomon Islands with some legal recourse against custom that discriminates against them on the basis of sex/gender.
  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. Soliciting is a criminal offence in the Solomon Islands and is in non-compliance with CEDAW. The Solomon Islands also 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 there are a range of offences for procuring girls or women without their consent including trafficking, providing some protection against exploitation, the sentences for such offences are uniformly only 2 years which 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 the Solomon Islands. However, the Solomon Islands which currently has no female members of parliament out of a total of 50 seats, 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 the Solomon Islands, 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. Discriminatory provisions exist in the Solomon Islands nationality and citizenship laws which differentiate between the rights of a non-national woman who marries a Solomon Islander and a non-national man who marries a Solomon Islander. Whereas a woman is given the right to obtain citizenship, a man is not. Such differentiation is based on the notion that a woman will follow her husband and will be dependant upon him. This is problematic because it does not reflect the notion of individual autonomy guaranteed in CEDAW. Other discriminatory aspects include a two year waiting period for a female spouse and a requirement for her husband's consent before citizenship can be granted. Further, she cannot obtain a passport during this time and due to discriminatory provisions in the Passport Act and cannot leave the country without her husband (unless she still retains the citizenship and passport of another country).
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. The Solomon Islands, however, has not yet introduced compulsory education for either primary or secondary schooling. Females also do not participate equally in tertiary education in the Solomon Islands and full compliance with Article 10 requires the government to adopt special measures for the advancement of women in education which it has not yet done. A prohibition on the expulsion of pregnant students is required for compliance with CEDAW so as to ensure that girls are not discriminated against by educational institutions due to their pregnant status.
17. Article 11 obligates States Parties to eliminate discrimination in employment. Women in the

Solomon Islands have many of the same rights in employment as men. However, there are a number of aspects of employment law in Solomon Islands 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. 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 ILO recommends a period of 14 weeks maternity leave and CEDAW recommends that this period be paid. In the Solomon Islands the *Labour Act* provides for 12 weeks maternity leave, only two weeks short of the ILO recommended period, however it is only paid at 25% of the woman's wage. Further, women are prohibited from working for 6 weeks after childbirth. 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, the Solomon Islands 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 the Solomon Islands 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 the Solomon Islands although there is limited scope for a remedy under the criminal code in common nuisance.
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 the Solomon Islands 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 an 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 the Solomon Islands 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 the Solomon Islands 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. The Solomon Islands, 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. The Solomon Islands does not guarantee women equality before the law however there are no legal barriers to women's participation in court and tribunal processes, nor are women denied the right to conclude contracts and administer property.
25. Article 16 obligates States Parties to remove discrimination in family and personal laws including marriage, separation, divorce, maintenance, child custody, property division, paternity and inheritance.
26. The CEDAW Committee in General Recommendation 21 has nominated 18 as the minimum age of marriage for both males and females. In the Solomon Islands, in non-compliance with CEDAW, the minimum age for marriage is 15 for both males and females. Those between 15 and 18 however, must seek approval from their fathers, reinforcing the stereotype of the father as the head of the household, and denying the equal parenting responsibilities mandated by Article 16. Whilst the Solomon Islands requires, in compliance with CEDAW, the registration of marriages and prohibits bigamy, customary marriages are exempt from these requirements.
27. Fault based divorces, which require 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 the Solomon Islands is based on fault based criteria (including adultery, desertion and cruelty) and is therefore not compliant with CEDAW. Further, also in non-compliance with CEDAW, husband can sue a third party for an adulterous relationship with his wife but this action is not available for wives in relation to their adulterous husbands.
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. The Solomon Islands *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 ‘just and reasonable’, terms that have historically been interpreted to the disadvantage of women. 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. Although unmarried mothers can claim for maintenance for children they must lodge the claim within 3 years of the child’s birth denying the joint responsibility of children by both parents until they reach the age of majority.

29. In General Recommendation 21, which deals with equality in family relations, the Committee states that the division of marital property should include recognition of non-financial contributions during a marriage such as raising children, caring for elderly relatives, and discharging household duties. However, the Solomon Islands provides no legislative provision for the division of property after separation and divorce and therefore any determination is left to custom which may discriminate against women.
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. The Solomon Islands has not adopted the recommended standard of the best interests of the child as the paramount consideration in custody disputes after separation and divorce, and instead bases custody disputes on the standards of ‘just and necessary’.
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 the Solomon Islands do not enjoy equality in relation to the ownership, administration, enjoyment and disposition of property leaving men are in control of many aspects of land and property.
32. Article 16 requires that inheritance laws should apply equally to males and females. Inheritance laws apply equally to males and females under the formal law, although customary rules of inheritance may lawfully operate in conflict with the legislation.
33. A series of tables detailing the Solomon Islands 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 Solomon Islands’ legislation does or does not meet the indicator.

## Solomon Islands: Detailed Analysis of Indicators

ARTICLE 1: DEFINITION OF DISCRIMINATION AGAINST WOMEN ARTICLE 2: OBLIGATION TO ELIMINATE DISCRIMINATION			
INDICATOR	COMPLIANCE	RELEVANT LEGISLATION	COMMENTARY
1.1 Does the Constitution guarantee fundamental human rights and freedoms to men and women equally including in the political, economic social, cultural, civil or any other field?	Partial	<p><i>Constitution of Solomon Islands 1978.</i></p> <ul style="list-style-type: none"> <li>• s 3. Guarantees fundamental rights and freedoms to all citizens regardless of sex but subject to the public interest and rights and freedoms of others.</li> <li>• s 3 - 15. Right to life, right to personal liberty, protection from slavery and forced labour, protection from inhumane treatment, protection from deprivation of property, protection of privacy of home, protection of law, freedom of conscience, freedom of expression, freedom of assembly and association, freedom of movement, protection from discrimination.</li> </ul>	<p>The rights protected include most of those required by CEDAW. There is therefore substantial compliance with this indicator but</p> <ul style="list-style-type: none"> <li>• The right to the highest attainable standard of physical and mental health is not a guaranteed right.</li> <li>• Substantive equality is not a guaranteed right.</li> <li>• The rights and freedoms are subject to public interest. This gives courts the discretion to deny the rights and freedoms if they consider it in the public interest to do so.</li> </ul>
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?	Yes	<i>Constitution of Solomon Islands 1978, s 15(1)-(4).</i> Prohibits any treatment to different persons attributable to their sex and subjecting such person to disabilities or restrictions which another person of another such description is not afforded, or privileges or advantages not accorded to another of such description.	
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		Note the <i>Penal Code 1966, s 162 (a)</i> . Any person who, whether in public or private commits any act of gross indecency with another of the same sex commits an offence. This provision discriminates against

ARTICLE 1: DEFINITION OF DISCRIMINATION AGAINST WOMEN ARTICLE 2: OBLIGATION TO ELIMINATE DISCRIMINATION			
INDICATOR	COMPLIANCE	RELEVANT LEGISLATION	COMMENTARY
			women in same sex relationships illustrating the need for anti-discrimination provisions in the Constitution on the grounds of sexual orientation.
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?	Partial	<i>Constitution of Solomon Islands 1978, s 15 (1).</i> No law shall be discriminatory either of itself or its effect.	The extension to the effect of the law provides the capacity for actions in indirect as well as direct discrimination. However the provision applies only to law, and not to actions of individuals or organisations.
1.9 Does the anti-discrimination clause bind public authorities and institutions?	Yes	<i>Constitution of Solomon Islands 1978,</i> <ul style="list-style-type: none"> <li>• <b>s 15 (1).</b> No law shall be discriminatory either of itself or its effect or</li> <li>• <b>s 15 (2).</b> Any person acting by virtue of any law or in the performance of the function of any public office or public authority.</li> </ul>	
1.10 Does the anti-discrimination clause bind any person, organisation or enterprise?	Partial	<i>Constitution of Solomon Islands 1978, s 15(3).</i> Shops, hotels, lodging-houses, restaurants, places of public entertainment and access to places of public resort wholly or partly maintained by public funds.	This provision extends protection to a range of situations that involve some persons and organisations but does not extend to all situations.
1.11 Are sanctions imposed for breach of anti-discrimination clause?	Yes	<i>Constitution of Solomon Islands 1978,</i> <ul style="list-style-type: none"> <li>• <b>s 17.</b> Entitled to compensation from person or authority which contravened rights and freedoms.</li> <li>• <b>s 18.</b> The High Court can make orders, issue writs and give directions to enforce or secure rights protected.</li> </ul>	
1.12 Are there specific domestic violence offences in the criminal law legislation (Penal Code)?	No	There are no specific offences for domestic violence. Three provisions in the <i>Penal Code 1966</i> could be used in some circumstances. <ul style="list-style-type: none"> <li>• <b>s 231(i).</b> Intimidation and molestation - 3 years imprisonment.</li> <li>• <b>s 244.</b> Common assaults - 1 year imprisonment.</li> <li>• <b>s 245.</b> Assaults causing actual bodily harm - 5 years imprisonment.</li> </ul>	These offences do not provide for the complexity and ongoing nature of domestic violence nor are the sentences reflective of its seriousness.

<b>ARTICLE 1: DEFINITION OF DISCRIMINATION AGAINST WOMEN</b> <b>ARTICLE 2: OBLIGATION TO ELIMINATE DISCRIMINATION</b>			
INDICATOR	COMPLIANCE	RELEVANT LEGISLATION	COMMENTARY
1.13 Is stalking a criminal offence?	Partial	<i>Penal Code 1966, s 231.</i> Any person who intimidates or molests any other person shall be guilty of an offence - 3 years imprisonment.	This offence could be used in some limited instances of stalking but is insufficient to encompass the situations in which women can be stalked.
1.14 Is a restraining order available in situations of sexual and domestic violence regardless of marital status?	Partial	<i>Affiliation, Separation and Maintenance [Cap 1] 1971,</i> <ul style="list-style-type: none"> <li>• s 22. Either party can apply. If the court is satisfied that a person is violent or threatening violence court can order them to leave the marital home and to prohibit them re-entering the matrimonial home. The order can be made without the respondent being served.</li> <li>• s 24. Wider powers of arrest if order breached and can arrest if 'reasonable cause' for suspecting breach.</li> </ul>	These provisions are largely compliant with the indicator. However, they only apply to those married by legislation or by custom and exclude those in de facto relationships.
1.15 Is there mandatory prosecution for domestic violence offences?	No		
1.16 Does the criminal law legislation contain a broad range of sexual assault offences graded on the basis of seriousness to the victim?	Partial	<i>Penal Code 1966</i> There are a range of sexual assault offences with different penalties. <ul style="list-style-type: none"> <li>• s 136. Rape - life imprisonment.</li> <li>• s 140. Abduction of unmarried girl under 18 to have carnal knowledge - misdemeanour.</li> <li>• s 141. Indecent assault - 5 years imprisonment.</li> <li>• s 142. Defilement of girl under 13 - life imprisonment.</li> <li>• s 143. Defilement 13 - 15 - 5 years imprisonment.</li> <li>• s 143. No prosecution shall be commenced for defilement of girl between 13 - 15 if it is more than twelve months after the commission of the offence.</li> </ul>	<ul style="list-style-type: none"> <li>• Although rape and defilement of girl under 13 are treated seriously, the significantly lighter 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. This coupled with the absence of expansive offences (other than indecent assault) to include the range of violations experienced by women make the regime inadequate.</li> <li>• s143 is a discriminatory provision given the secrecy that surrounds sexual abuse making it difficult for girls to report offences.</li> </ul>
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 1966, s 168.</i> It is 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.	The Penal Code does not allow for penetration other than penile penetration of the vagina. This excludes



<b>ARTICLE 1: DEFINITION OF DISCRIMINATION AGAINST WOMEN</b> <b>ARTICLE 2: OBLIGATION TO ELIMINATE DISCRIMINATION</b>			
INDICATOR	COMPLIANCE	RELEVANT LEGISLATION	COMMENTARY
			the variety of ways in which 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 1966, s 164.</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, and shall be liable to imprisonment for seven years.	There is an offence of incest in the Code which means that women and girls 15 or over 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"> <li>• No girl under 18 should be charged with any sexual offence and consent should be irrelevant.</li> <li>• An offence of incest against women and girls fails to recognise the power imbalance between girls and women and male relatives.</li> <li>• Incest is typically perpetrated by men against girls and women in non-consensual and coercive circumstances.</li> </ul>
1.19 Have the terms indecency, carnal knowledge, defilement and insulting modesty been removed from the criminal law legislation?	No	<i>Penal Code 1966.</i> The terms defilement, insulting the modest 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 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 1966, s 136.</i> Consent cannot be 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 personating her husband.	This definition does not embrace the full range of situations in which women may consent because of coercion. In particular a threat to a third party. A non-exhaustive list would achieve full compliance.

ARTICLE 1: DEFINITION OF DISCRIMINATION AGAINST WOMEN ARTICLE 2: OBLIGATION TO ELIMINATE DISCRIMINATION			
INDICATOR	COMPLIANCE	RELEVANT LEGISLATION	COMMENTARY
1.21 Is there a legislative prohibition on the use of prior sexual conduct to establish consent?	No		
1.22 Is there a legislative prohibition on requirement for corroboration?	No		
1.23 Is there a legislative prohibition on the requirement for proof of resistance?	No		
1.24 Is there a defence of honest and reasonable belief that the victim is of legal age? If there is no defence of honest and reasonable belief then there is full compliance with this indicator.	No	<p><i>Penal Code 1966,</i></p> <ul style="list-style-type: none"> <li>• s 140. Abduction of unmarried girl under 18 with intent to have carnal knowledge. Defence honest and reasonable belief 18 or over.</li> <li>• s 143. Defilement of girl 13-15. Defence honest and reasonable belief 15 or over.</li> </ul>	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'. The legislation <i>does</i> provide such a defence in relation to the defilement of girls between 13-15 and in relation to the abduction of girls under 18. These provisions place 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?	Partial	<i>Penal Code 1966,</i> Lack of consent is not a defence in relation to girls 15 and under.	Full compliance with the indicator requires that consent is not a defence in relation to any girl under 18.
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 Solomons Islands is therefore in full compliance with this indicator and with CEDAW.

<b>ARTICLE 1: DEFINITION OF DISCRIMINATION AGAINST WOMEN</b> <b>ARTICLE 2: OBLIGATION TO ELIMINATE DISCRIMINATION</b>			
INDICATOR	COMPLIANCE	RELEVANT LEGISLATION	COMMENTARY
1.27 Is there mandatory prosecution for sexual offences?	No		
1.28 Is bail unavailable for sexual offences if risk to victim?	Partial	<i>Criminal Procedure Code [Cap 7] 1962, s 23, s 106, s 107.</i> Bail granted by police unless 'serious'.	No particular provisions to protect victims in instances of sexual offences. Sexual offences involving penile penetration come within the category of 'serious', however, all other violations will not.
1.29 Are there minimum sentences for sexual offences?	No		There are no minimum sentences leaving the severity of penalty to the discretion of the judge. The issuing of short sentences sends a message that sexual offences are not seriously regarded.
1.30 Is there a provision in the criminal 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?	Yes	<i>Criminal Procedure Code 1962, s 156(1)(b).</i> Court can order defendant to pay compensation to the victim of a crime.	
1.32 Does the criminal legislation allow for infanticide to replace a charge of murder or manslaughter?	Partial	<i>Penal Code 1966, s 206.</i> Where a woman by any wilful act or omission causes the death of her child under the age of twelve months, in a situation where 'the balance of her mind was disturbed by reason of her not having fully recovered from the effect of giving birth to the child or by reason of the effect of lactation consequent upon the birth of the child' she shall be guilty of infanticide to be dealt with and punished as if she had been guilty of manslaughter of the child.	A charge of murder is replaced with manslaughter but this is still a serious offence with a life sentence as a penalty. To fully satisfy this indicator both murder and manslaughter should be replaced with a lesser charge of infanticide.

**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 Women in Development Division has been established in the Department of Home Affairs. This Division replaced the Ministry for Women which was established in 1997 and abolished in 2003. Note that although this Division has some power to monitor the implementation of law and policy for the advancement of women the failure to enact a legislative authority for its establishment renders the Division susceptible to removal in times of economic or political 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?	No		
4.2 Are special measures exempt from discrimination on the grounds of sex, marital status, sexual orientation, HIV status and disability ?	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?	Partial	<p><i>Constitution of Solomon Islands 1978,</i></p> <ul style="list-style-type: none"> <li>• <b>s 75(1).</b> Parliament shall make provision for the application of laws, including customary laws (2). In making provision under this section, Parliament shall have particular regard to the customs, values and aspirations of the people of Solomon Islands.</li> <li>• <b>Schedule 3 s 3(1)</b> Customary law shall have effect as part of the law of Solomon Islands but (2) not customary law that is, and to the extent that it is, inconsistent with this Constitution or an Act of Parliament.</li> </ul>	Customary law is given legal status by the Constitution. However, customary law cannot be inconsistent with the Constitution and the presence of a strong anti-discrimination clause in the Constitution provides women with an avenue of redress against customary law that discriminates against them.

### ARTICLE 6: EXPLOITATION OF WOMEN

INDICATOR	COMPLIANCE	RELEVANT LEGISLATION	COMMENTARY
6.1 Is the act of soliciting decriminalised?	No	<i>Penal Code, 1966, s 153(1)</i> Any person who in any public place persistently solicits or importunes for immoral purposes is guilty of an offence - misdemeanour.	Although the provision is formally equal as it applies equally to men and women criminalising the act of soliciting denies sex workers the right to choose their employment and to have their workplace lawfully protected. It is therefore non-compliant with CEDAW.
6.2 Is aiding and abetting consensual acts of soliciting decriminalised?	No	<p><i>Penal Code 1966.</i> Two offences.</p> <ul style="list-style-type: none"> <li>• <b>s 153 (a).</b> Any person knowingly lives wholly or in part on the earnings of prostitution - misdemeanour.</li> <li>• <b>s 155.</b> Operating a brothel – misdemeanour.</li> </ul>	The legislation criminalises living off sex work or operating brothels. Although applicable to both males

## ARTICLE 6: EXPLOITATION OF WOMEN

INDICATOR	COMPLIANCE	RELEVANT LEGISLATION	COMMENTARY
			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 or girl under 18?	Yes	<i>Penal Code 1966</i> <ul style="list-style-type: none"> <li>• s 147. Owner of premises allows 13-15 girl for prostitution (consent no defence) - 2 years.</li> <li>• s 148. Detains any girl or woman in brothel without consent - 2 years.</li> <li>• s 149. Any parent that allows under a girl under 15 for prostitution - 2 years.</li> <li>• s 156. Procures using false pretences - 2 years.</li> </ul>	Although providing some protection from exploitation, the offences are not fully compliant because: <ul style="list-style-type: none"> <li>• Excludes situations where girls or women who are induced into prostitution against their will by threat, drugs or other means of coercion.</li> <li>• The penalties are low.</li> </ul>
6.4 Does employment legislation including occupational health and safety legislation protect sex workers?	No		Sex workers should be entitled to all the rights and protections of other workers.
6.5 Is the trafficking of women prohibited?	Partial	<i>Penal Code, 1966.</i> Two offences for procuring girls and women and taking them elsewhere. <ul style="list-style-type: none"> <li>• s 144. Procuring girl or woman for sexual intercourse with another person in Solomon Islands or elsewhere or to frequent a brothel elsewhere - 2 years imprisonment.</li> <li>• s 145. Procuring using drugs for sexual intercourse with another person in Solomon Islands or elsewhere - 2 years imprisonment.</li> </ul>	These provisions provide some protection from the trafficking of women but the short sentences suggest that the exploitation of women for prostitution is not seriously regarded.
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 Solomon Islands 1978, s 56(1).</i>	
7.2 Is there equal eligibility for political representation?	Yes	<i>Constitution of Solomon Islands 1978, s 48.</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

## ARTICLE 7: POLITICAL AND PUBLIC LIFE

INDICATOR	COMPLIANCE	RELEVANT LEGISLATION	COMMENTARY
			50 seats in the Solomon Islands 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 NGOs to register and mobilise to promote the advancement of women, without political interference?	No	<i>Co-operative Societies Act Cap 164, 1953.</i>	The object of societies that register under this Act is to promote the economic interests of its members. This does not meet the needs of NGOs.

## ARTICLE 8: INTERNATIONAL REPRESENTATION AND PARTICIPATION

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

## ARTICLE 9: NATIONALITY AND CITIZENSHIP

INDICATOR	COMPLIANCE	RELEVANT LEGISLATION	COMMENTARY
9.1 Do women have an equal right to acquire, change or retain their nationality?	Yes	<i>Constitution of Solomon Islands 1978, s 20.</i>	
9.2 Does marriage to a non-national or change of husband's	No	<i>Citizenship Act [Cap 57] 1978, s 10.</i> If a woman marries a national of another country and	To be compliant with this indicator, the marriage of

## ARTICLE 9: NATIONALITY AND CITIZENSHIP

INDICATOR	COMPLIANCE	RELEVANT LEGISLATION	COMMENTARY
nationality affect wife's nationality? If there is no change to a wife's nationality after marriage there is full compliance with this indicator.		becomes a citizen of that country can only regain her Solomon Island citizenship if marriage broken down. Does not apply in reverse.	a woman to a non-national should not affect her nationality. The legislation although ostensibly aimed at protecting women <i>does</i> affect her nationality and is discriminatory. The provision does not apply to men presuming that men who marry non-nationals will not leave to take up citizenship in their wife's country. It also takes away her autonomy to choose citizenship (and domicile) making it contingent upon marriage breakdown.
9.3 Do both spouses have an equal right to residency, citizenship and employment when spouse is a non-national?	No	<p><i>Citizenship Act [Cap 57] 1978.</i></p> <ul style="list-style-type: none"> <li>• s 7(3). Wife of Solomon Islander can become citizen after two years and if her husband consents.</li> <li>• s 11. If woman gains citizenship through marriage and then divorces and marries person of another nationality she is deemed to have renounced her citizenship. This is not applicable to men</li> </ul> <p><i>Constitution of Solomon Islands 1978, s 20.</i> Woman married to either indigenous Solomon Islander or person with British protector status or a father with that status can become citizen.</p>	<p>This provision is discriminatory because</p> <ul style="list-style-type: none"> <li>• It does not apply to husband of female citizen.</li> <li>• Requires two years residence during which time she cannot get passport.</li> <li>• Requires husbands consent imparting a stereotype of the man the as the head of the household.</li> </ul> <p>This is discriminatory because it applies only to foreign women married to Solomon Islanders and not foreign men married to Solomon Islanders and because fathers are recognised but not mothers.</p>
9.4 Do both spouses have equal rights in determining nationality of children?	No	<i>Citizenship Act [Cap 57]1978, s 6.</i> A child adopted by male and female becomes citizen only if male adoptee is a citizen.	
9.5 Do women have an equal right to obtain passport?	No	<p><i>Passports Act [Cap 61] 1978</i></p> <ul style="list-style-type: none"> <li>• s 4(1). Wife of a citizen who does not have citizenship cannot be included in husband's passport.</li> </ul>	<p>These provisions are discriminatory because:</p> <ul style="list-style-type: none"> <li>• Women who marry Solomon Islanders</li> </ul>



## ARTICLE 9: NATIONALITY AND CITIZENSHIP

INDICATOR	COMPLIANCE	RELEVANT LEGISLATION	COMMENTARY
		<ul style="list-style-type: none"> <li>s 4(4). If a passport obtained by husband has wife's name in it she cannot use it to travel alone.</li> </ul>	<p>have to wait two years and obtain their husband's consent for citizenship and therefore cannot obtain passports during this time.</p> <ul style="list-style-type: none"> <li>This provision does not apply to husbands of Solomon Island citizens.</li> <li>If a wife is included in husband's passport she cannot travel alone interfering with her autonomy and freedom of movement.</li> </ul>

## ARTICLE 10: EDUCATION

INDICATOR	COMPLIANCE	RELEVANT LEGISLATION	COMMENTARY
10.1 Does the legislation guarantee women and girls equal access to education?	No		
10.2 Is there legislation that creates special measures for the advancement of women in education?	No		
10.3 Is there compulsory primary education for girls and boys?	Partial	<i>Education Act [Cap 69], s 17.</i> The minimum age for entry into school is 6 and the maximum age is 9.	The legislation does not explicitly state that education is compulsory.
10.4 Is there compulsory secondary education for girls and boys?	No		
10.5 Is family life (reproductive and sexual education) compulsory in schools?	No		
10.6 Is there a legislative prohibition on expulsion from school because of pregnancy?	No		

## ARTICLE 11: EMPLOYMENT

INDICATOR	COMPLIANCE	RELEVANT LEGISLATION	COMMENTARY
11.1 Are there anti-discrimination provisions in employment legislation on the grounds of sex, marital status, pregnancy, sexual orientation and HIV status with sanctions?	No		
11.2 Are there special measures provisions for the advancement of women in employment?	No		
11.3 Do women enjoy equal conditions of work including leave, superannuation and Workers Compensation?	Partial	Equal except that <ul style="list-style-type: none"> <li>• <b>Labour Act [Cap 73] 1960, s 2.</b> Excludes domestic servant including the domestic services performed in any dwelling house.</li> <li>• <b>Workers Compensation Act [Cap 78] 1952, s 2.</b> Excludes outworkers, a member of the employer's family living in his house.</li> <li>• <b>Solomon Islands National Provident Fund Act [Cap 109] 1976, First Schedule.</b> Excludes outworkers.</li> </ul>	The exclusion of domestic workers, outworkers, part time workers and casual workers from the protections provided in the legislation are likely to exclude women disproportionately since these are the capacities in which women are typically employed.
11.4 Does the legislation provide sexual harassment protection from employers and co-workers?	Partial	<b>Penal Code 1966, s 141(3).</b> An offence to 'intend 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'.	This could be used only in limited circumstances and is unlikely to be used by many women in the work context.
11.5 Does the definition of sexual harassment include the breadth of unwanted behaviours?	No		The definition in the Penal Code will not encompass the breadth of unwanted behaviours women may experience.
11.6 Does the legislation contain an equal pay provision?	Yes	<b>Labour Act [Cap 73] 1960, s 30.</b> Wages fixed in relation to occupation and no differentiation on the basis of sex.	
11.7 Does the legislation contain pay equity legislation provisions?	No		
11.8 Does the legislation provide for an equal retirement age?	No		No specific guarantee of equal retirement age.
11.9 Are there restrictions on women's choice of employment? If there are no restrictions on women's choice of employment then	No	<b>Labour Act [Cap 73] 1960.</b> <ul style="list-style-type: none"> <li>• <b>s 39.</b> Women cannot be employed during the night in any undertaking, -except raw materials or materials in course of treatment which are subject to rapid deterioration,</li> </ul>	To be compliant with this indicator, there should be no restrictions on a woman's choice of employment. The <i>Labour</i>

## ARTICLE 11: EMPLOYMENT

INDICATOR	COMPLIANCE	RELEVANT LEGISLATION	COMMENTARY
there is full compliance with this indicator		<p>emergency, responsible position, nursing caring for sick or health and welfare work, in a cinema, hotel bar restaurant and club, pharmacist. The Minister can also provide exceptions.</p> <ul style="list-style-type: none"> <li>• s 40(1). Women shall not be employed in underground work in any mine except in management and health and welfare services.</li> <li>• s 41. 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.</li> </ul>	<i>Act</i> prevents women from undertaking certain types of work. This is discriminatory and in non compliance with the indicator and with CEDAW.
11.10 Does the legislation provide for health protection during pregnancy?	Partial	<i>Safety at Work Act [Cap 74]</i> . Although there is a general duty on employers to provide a safe working environment there is no specific protection for pregnant women.	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	<p><i>Labour Act [Cap 73] 1960,</i></p> <ul style="list-style-type: none"> <li>• s 42. With 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 during which it shall be an offence for her employer or any other employer to give her employment, and acceptance by a female worker of such employment from any other employer shall be deemed to be a breach of her previous contract. The remainder may be taken before birth or after if certified to be necessary by a medical practitioner.</li> <li>• s 42(3). If ill before or after confinement leave with medical certificate can have leave in addition to the period of compulsory leave which may be deducted from the annual leave or sick leave entitlement of the worker.</li> <li>• However if a female worker who has received the wages due to her during the period of maternity leave or additional leave approved by her employer, should fail without reasonable cause to return to work for her employer she shall be regarded as having abandoned her employment without due notice and shall</li> </ul>	<p>Although paid maternity leave for a period of 12 weeks is provided there are several discriminatory features.</p> <ul style="list-style-type: none"> <li>• Pay is only guaranteed at 25%.</li> <li>• There is a prohibition on working during the 6 weeks after childbirth. Although this is intended to 'protect' women, (as full pay is not provided) it may result in financial hardship and it removes her autonomy to choose when she will work.</li> <li>• If a woman does not return she must repay the leave payment. Given there is no provision for extended unpaid leave, if she cannot find childcare or if she</li> </ul>

## ARTICLE 11: EMPLOYMENT

INDICATOR	COMPLIANCE	RELEVANT LEGISLATION	COMMENTARY
		be required to pay to her employer an amount equivalent to the wages payable during the period of notice specified by section 3 or equivalent to the wages payable during the period of notice for which express or implied provision is made in her contract or service, whichever is the greater.	wishes to spend at extended time nursing young children this is discriminatory.
11.12 Does the legislation provide protection from dismissal because of pregnancy or maternity leave?	Partial	<i>Labour Act [Cap 73] 1960, s 43.</i> Cannot be dismissed during maternity leave taken in accordance with the Act and any additional leave which may have been certified to be necessary by a medical practitioner.	Women can be dismissed if they fail return to work after the approved leave period. There is no genuine allowance for the dual role of women to care for children and work in paid employment.
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>Labour Act [Cap 73] 1960, s 42(5).</i> Up to an hour twice a day during her working hours. Such interruptions of work shall be counted as working time and shall be remunerated accordingly.	This is insufficient to realistically allow women to breastfeed young children and continue employment.

## 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	<ul style="list-style-type: none"> <li><i>Penal Code 1966, s 158.</i> Any woman who, being with child, with intent to procure her own miscarriage, unlawfully administers to herself any child poison or other noxious thing, or uses any force of any kind, or uses any other means whatever, or permits any such thing, or means to be administered or used to her, shall be guilty of a felony - life imprisonment.</li> </ul> <p>But</p> <ul style="list-style-type: none"> <li><i>s 221(1).</i> Not an offence if in good faith for the purpose of preserving the life of the mother.</li> </ul>	<p>These provisions are discriminatory to women because:</p> <ul style="list-style-type: none"> <li>The criminalisation of abortion denies women access to safe medical facilities and encourages the use of unsafe methods and facilities.</li> <li>The criminalisation of abortion restricts women's autonomy and right to choose if and when they have children.</li> <li>The serious penalty for women who</li> </ul>

**ARTICLE 12: HEALTH CARE AND FAMILY PLANNING**

INDICATOR	COMPLIANCE	RELEVANT LEGISLATION	COMMENTARY
			<p>procure their own abortion (life imprisonment) fails to account for the reasons why women may choose to abort.</p> <ul style="list-style-type: none"> <li>Note that abortion is lawful to save the life of the mother.</li> </ul>

**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		The Solomon Islands does not have a social security system.
13.2 Do women have equal right to receive bank loans, mortgages and financial credit?	Yes		No legal barrier to receive bank loans, mortgages and financial credit.
13.3 Do women have an equal right to participate in recreational activities, sports and cultural life?	Yes		No legal barrier preventing women from participating 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 Solomon Islands live in rural communities and it is crucial that the Solomon Islands 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		
15.2 Do women have an equal capacity in civil matters – can women sue?	Yes		No legal barrier to women's right to sue.
15.3 Do women have an equal right to participate in courts and tribunals at all stages?	Yes		No legal barrier to women's right to participate in court proceedings.
15.4 Do women have an equal right (regardless of marital status) to conclude contracts and administer property?	Yes		No legal barrier to women's right to conclude contracts and administer property.
15.5 Do women have an equal right to be executors or administrators of estates?	Yes	<i>Wills, Probate and Administration Act [Cap 33] 1987, s 60.</i>	
15.6 Is there legislation nullifying all contracts and instruments that limit women's legal capacity?	No		No specific prohibition on discriminatory contracts.
15.7 Do women have an equal right to choose residence and domicile?	Partial	<i>Citizenship Act [Cap 57] 1978.</i> <ul style="list-style-type: none"> <li>• s 7(3). Wife of Solomon Islander can become citizen after two years and if her husband consents.</li> <li>• s 11. If woman gains citizenship through marriage and then divorces and marries person of another nationality is deemed to have renounced her citizenship. This is not applicable to men.</li> </ul>	These provisions deny women the right to choose their domicile and residence in some circumstances and do not apply to men.

## 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>Islanders Divorce Act [Cap 170] 1960, s 12(b).</i> Marriage is void if induced by duress or mistake.  <i>Islanders Marriage Act [Cap 171] 1945, s 4.</i> Customary marriages valid.	The legislative recognition of customary marriage does not guarantee the right for women to enter marriage with full and free consent.
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	As above 16.1
16.3 Is there an equal minimum age of 18 for marriage?	Partial	<i>Islanders Marriage Act [Cap 171] 1945,</i> <ul style="list-style-type: none"> <li>• s 10. 15 years for both.</li> <li>• s 4. Customary marriages valid therefore</li> </ul>	Age of marriage is equal but: • The age is 15 well



## ARTICLE 16: PERSONAL AND FAMILY LAW

INDICATOR	COMPLIANCE	RELEVANT LEGISLATION	COMMENTARY
		marriages of any age according to custom.	below the CEDAW recommended age of 18. • Customary marriages are exempt from this requirement.
16.4 Is there a legislative prohibition on child marriage?	Partial	<i>Islanders Marriage Act [Cap 171] 1945</i> , • s 10. Marriage legal 15 and over. • s 4. Customary marriages valid.	There is no explicit prohibition on child marriage and 15 is well below the CEDAW Committee's recommended marriageable age.
16.5 Does the legislation require registration of marriage in an official registry?	Partial	<i>Islanders Marriage Act [Cap 171] 1945, s 15, s 18</i> . Customary marriages exempt from registration (may be registered if choose).	Mandatory registration of marriages assists in preventing bigamy and child marriages and since these are more likely to occur in customary law this provision reduces the impact of compulsory registration.
16.6 Does the legislation prohibit bigamy?	Partial	<i>Penal Code 1966, s 170</i> . Bigamy a criminal offence except a ceremony of marriage under customary law which is not a valid 'previous' marriage unless it has been registered under the provision of the Islanders' Marriage Act. <i>Islanders Marriage Act [Cap 171] 1945</i> . • s 14. Bigamy an offence - 5 years imprisonment but • s 19. Customary marriage exempt unless registered.	The exclusion of customary marriages from these provisions enables the practice of bigamy to legally continue.
16.7 Do women have an equal right to choose family name?	Yes		There is no legal barrier preventing women from choosing a family name.
16.8 Is the consent of both parents equal in marriage of minors?	No	<i>Islanders Marriage Act [Cap 171] 1945, s 10</i> . Child between 15 and 18 who wishes to be married must have written consent of father, or if dead, absent or unsound mind the mother.	The requirement to obtain father's consent rather than mother's perpetuates a stereotype of men as the head of the household and is non-compliant with the indicator and with CEDAW.
16.9 Are both spouses equal in ownership acquisition, management, administration, enjoyment and disposition of property?	No		The legislation does not guarantee equality to both spouses in ownership, acquisition, management, administration, enjoyment

ARTICLE 16: PERSONAL AND FAMILY LAW			
INDICATOR	COMPLIANCE	RELEVANT LEGISLATION	COMMENTARY
			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 calculated on the basis of need?	Partial	<p><i>Affiliation, Separation and Maintenance Act [Cap 1] 1971.</i> Separation based on fault.</p> <ul style="list-style-type: none"> <li>• s 13. The husband shall pay to the wife such lump sum having regard to the means of both what court thinks is reasonable.</li> <li>• s 17. If she commits adultery the order for maintenance is discharged.</li> </ul>	<p>Although there is provision for maintenance during separation the legislation does not fully comply with the indicator because:</p> <ul style="list-style-type: none"> <li>• The criterion of reasonableness does not provide sufficient guidance in relation to earning capacity, commitments and needs of the parties.</li> <li>• There are no criteria for the calculation of women's non financial contributions.</li> <li>• The removal of a maintenance order because of adultery is discriminatory.</li> </ul>
16.11 Is there legislation to enable women to occupy the marital home when settlement is not possible or in situations of domestic violence?	Yes	<i>Affiliation, Separation and Maintenance [Cap 1] 1971, s 22.</i> Either party can apply. If the court is satisfied that a person is violent or threatening violence court can order them to leave the marital home and to prohibit them re-entering the matrimonial home.	
16.12 Does the legislation provide for an order for 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

ARTICLE 16: PERSONAL AND FAMILY LAW			
INDICATOR	COMPLIANCE	RELEVANT LEGISLATION	COMMENTARY
			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?	No	<p><i>Islanders Divorce Act</i> [Cap 170] 1960,</p> <ul style="list-style-type: none"> <li>• s 5. Fault based grounds for divorce includes 5 year separation.</li> <li>• s 13. If sexual intercourse has taken place with consent of petitioner since the discovery of grounds for divorce then no divorce.</li> <li>• s 3. Act applies if it is a custom marriage registered only when the husband is domiciled in the Solomon Islands. Therefore if he is not domiciled in Solomon Islands the wife cannot get a divorce. This does not apply in reverse.</li> </ul>	<ul style="list-style-type: none"> <li>• Fault based criteria for divorce disadvantages women who are more likely to be in untenable situations and have difficulty establishing cruelty or adultery.</li> <li>• The provision to deny divorce if sexual intercourse has taken place between the parties is also discriminatory because it does not take account of whether it took place in a coercive situation.</li> <li>• It also denies the autonomy of both parties to choose sexual relations without such consequences.</li> </ul>
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		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 does not place a duty on the court to promote legislation and therefore is in full 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?	No	No provision for division of property.	The failure to provide criteria for the division of property means that the courts have to look to the common law which is unlikely to recognise women's non-financial contributions.
16.16 Does the legislation provide for the payment of child support after divorce based on need?	Partial	<i>Islanders Divorce Act [Cap 170] 1960, s 21.</i> 'Just and necessary'.	This criterion is insufficient to ensure support based on the child's needs, the earning capacity and assets and the respective commitments of both.
16.17 Does the legislation provide for the payment of maintenance for the ex spouse based on commitments, income, earning capacity, assets?	Partial	<i>Islanders Divorce Act [Cap 170] 1960, s 21.</i> 'Just and necessary'.	This criterion is insufficient to ensure support based on the woman's needs, the earning capacity and assets and the respective commitments of both.
16.18 Is custody and access to children based on the best interests of child regardless of relationship of the parents?	No	<i>Islanders Divorce Act [Cap 170] 1960, s 21.</i> 'Just and necessary'.	Although the legislation does not specify the best interests of the child principle the courts do apply it as a matter of common law.
16.19 Does the legislation provide damages for adultery? If there is no provision for damages then there is full compliance with this indicator.	No	<i>Islanders Divorce Act [Cap 170] 1960, s 18.</i> Husband may claim damages on petition for divorce or separation from 3 <sup>rd</sup> person on the ground of adultery.	To be complaint 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 <i>does</i> provide a right to damages for adultery and therefore is in non compliance with the indicator and with CEDAW.
16.20 Do women have equal rights to guardianship, wardship, trusteeship and adoption?	Yes	<i>Adoption Act 2004, s 4.</i>	

## ARTICLE 16: PERSONAL AND FAMILY LAW

INDICATOR	COMPLIANCE	RELEVANT LEGISLATION	COMMENTARY
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 for establishing parentage?	Partial	<i>Affiliation, Separation and Maintenance Act [Cap 1] 1971, s 5.</i> Parentage can only be established with 'evidence provided by the complainant, which must be corroborated'.	Corroboration can be difficult for women to provide.
16.23 Does the legislation for a contribution to pregnancy and child birth costs by father to unmarried mother unmarried by father?	Yes	<i>Affiliation, Separation and Maintenance Act [Cap 1] 1971, s 3, s 5.</i> Within 3 years of the birth or if he has left Solomon Islands within 12 months of his return court can award expenses incidental to the payment of the birth.	
16.24 Does the legislation provide for the payment of child support for children born outside of marriage?	Partial	<i>Affiliation, Separation and Maintenance Act [Cap 1] 1971,</i> <ul style="list-style-type: none"> <li>s 3. Within 3 years of the birth.</li> <li>s 5. If he has left Solomon within 12 months of his return can award payment for maintenance and education of child. Amount 'reasonable' and based on means of father.</li> </ul>	<ul style="list-style-type: none"> <li>The commitment to share the costs of raising a child does not expire until the child reaches 18, therefore a time limit on any claim for maintenance is discriminatory.</li> <li>The amount should be based on a range of criteria of which the means of the father is one. Other criteria include the earning capacity of both parties, the commitments of both, and the needs of the child.</li> </ul>
16.25 Does the legislation provide for equal inheritance laws?	Partial	<i>Wills Probate and Administration Act, [Cap 33] 1987, s 84.</i>	Although equal in the legislation customary law has constitutional status in the Solomon Islands. Customary inheritance laws that discriminate against women may be lawful in some circumstances.
16.26 Is there legislation requiring the court to apply CEDAW and CRC to domestic family law when relevant?	No		

