

Review of Documentation Relating to Violence against Women in SAMOA

Introduction

The purpose of this review is to identify, collate and summarise all documentation relating to Violence against Women in Samoa. This review is an essential base line document for the SPC/RRRT project, “Changing lives, protecting women” which is funded by the UN Trust Fund on Violence against Women (UNTF VAW). The project aims to build capacity at the national level through the provision of technical advice and information which will assist country level committees in lobbying for, and achieving sound legislation which will address violence against women.

The documentation is organised under the following headings:

1. Articles and reports discussing the incidence of VAW, the relevant law or government policies.
2. Statistics relating to the incidence of VAW in Samoa.
3. Policy statements or plans relating to VAW from government sources, including police.
4. Human Rights Reporting and Monitoring
5. Current legislation relating to VAW.
6. Current Reform initiatives relating to VAW in Samoa.

1). Articles and reports discussion the incidence of VAW, the relevant law or government Policies.

- a) Samoa Family Health and Safety Study, Secretariat of the Pacific Community, UNFPA & Government of Samoa, 2007.

The above study was carried out as part of the Pacific Multi-site Study of the Effects of Violence against Women on Family Health and Safety, a joint research initiative of the Secretariat of the Pacific Community and the United Nations Population Fund. The research was carried out with the assistance of the Ministry for Women Affairs. The methodology

included a nationwide representative sample of 1646 women aged between 15- 40 years and over. In depth interviews were conducted. The survey covered “ever partnered” women and this referred to women if they had ever been married or ever lived with a man, married women as well as a group of 664 men (Government of Samoa, UNFPA & SPC, 2007)

The findings showed that:

Table 1: Number of women who experienced violence.

| Percentage | Type of violation | By whom |
|------------|-------------------|-------------------|
| 41% | Physical violence | Intimate partners |
| 20% | Sexual | |

Table 2: Percentage of women and the type of violation experienced:

| Type of violation | Percentage of women |
|-------------------|---------------------|
| Domestic violence | 78% |
| Sexually violated | 11% |
| Indecent assault | 11% |

Table 3: Reasons.

| Percentage | Reason |
|-------------|-------------------------|
| 45.7% women | Family problems |
| 44.3% | Disobeying |
| 14.8% | When partners got drunk |
| 6.1 | Jealousy |
| 3.5% | Refused sex |
| 3.1% | Money problems |
| 8.6% | Unspecified problems |

Table 4: Number of cases reported to the police:

| Percentage | Didn't Report | Reason |
|-------------------------|---------------|--|
| 97% domestically abused | ✓ | |
| 36% of 97% | ✓ | Felt that it's a private matter between husband and wife |
| 8% of 97% | ✓ | Minor offence |
| 7% of 97% | ✓ | Incompatible with their love for their husbands |

- b) Cribb, J. and Barnett, R. 1999. Being Bashed: Western Samoa women's responses to domestic violence in Western Samoa and New Zealand. *Gender, Place and Culture* 6.

This study was conducted in 1998. The methodology included open ended questionnaires. Women's responses towards violence differ in the rural areas compared to those of the urban areas. As illustrated by Cribb and Barnett in a study conducted in 1998, 80% of women who were interviewed in Papa Savaii stated that if their husbands beat them they would leave them and go to their extended families, the home of their family's matai or to their church minister. Most of those who said they would stay with their partners if they were beaten had cash incomes and were the primary wage earners for their household. In contrast, only 57% in Vaivase tai stated that they would leave their partners if they were beaten. The women in Vaivase tai stated that they would use one of these strategies. First is to use social support system of their extended family. These women were mostly young and well educated and had prestige because of their education. Second is to tell their husband to leave. Such response came from women who lived in their own families who were mostly wealthy and headed by a matai who is either the woman's father or uncle and thirdly is to go to the police or divorce the husbands. These responses came from well educated, more economically independent and were more likely to have been educated abroad. 43% of the women in Vaivase tai said they would not leave their partners, instead they said they would cry and feel sad, apologise to their husbands or not react. Economic independence is an important element in protecting women from violence. Being a wage earner does not however protect a woman unless she has control over the money she earns.

- (c). OHCHR, UNDP, UNFPA, UNICEF & UNIFEM. COMPILATION OF RECOMMENDATIONS OF THE HUMAN RIGHTS TREATY BODIES TO THE COUNTRIES OF THE PACIFIC - Advancing the Implementation of Human Rights in the Pacific, 2007.

The report identified domestic violence as one of the challenges enduring the advancement of women in Samoa. It reaffirms Samoa's commitment to combat violence and any form of discrimination against women. This is evident in its laws and traditions, constitution as well as ratifying the Convention on the Elimination of All Forms of Discrimination against Women. In addition the report confirms and reaffirms some way forward for the Government of Samoa in dealing with violence against women at all levels.

- (d). Concluding Statement of the CEDAW.

The section on Samoa in the concluding comments of the Committee on the Elimination of Discrimination against Women on its thirty second session in January 2005 reaffirms Samoa's long standing commitment to the equal status of women as reflected in its laws and traditions. Not only that but its actions and on going programs in changing legislation on violence against women.

- (e). Translating CEDAW into Law: CEDAW Legislative Compliance in Nine Pacific Island Countries, 2007.

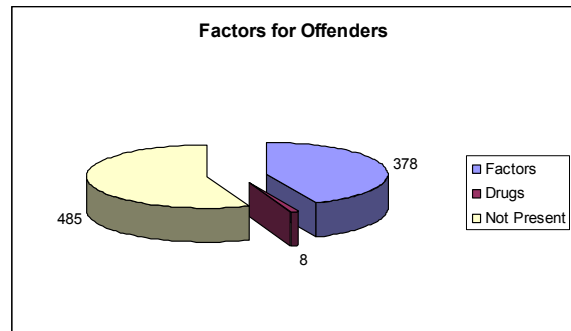
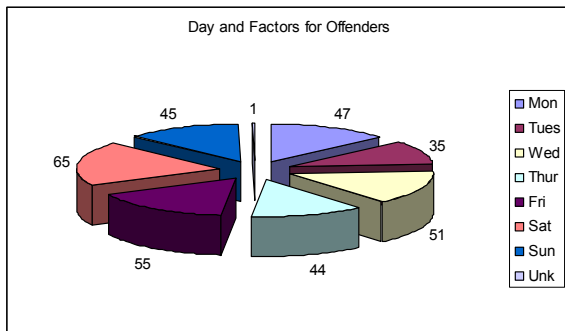
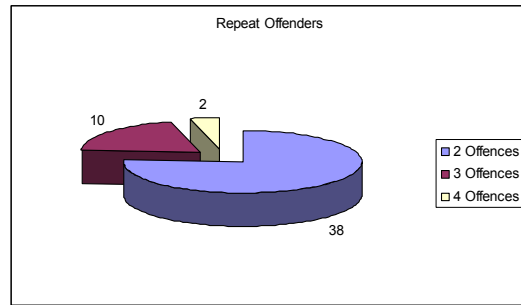
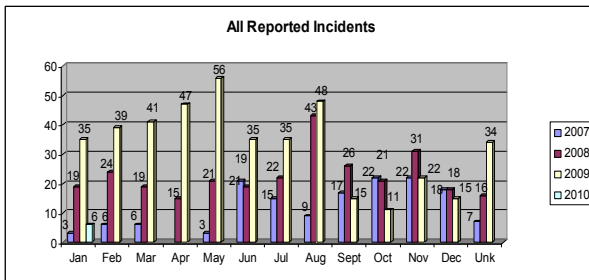
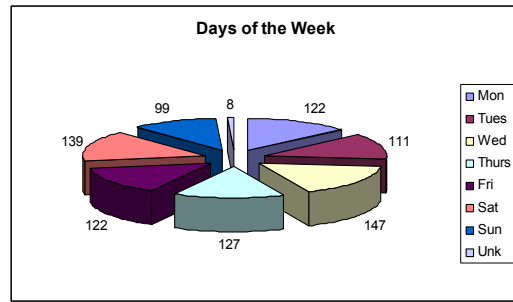
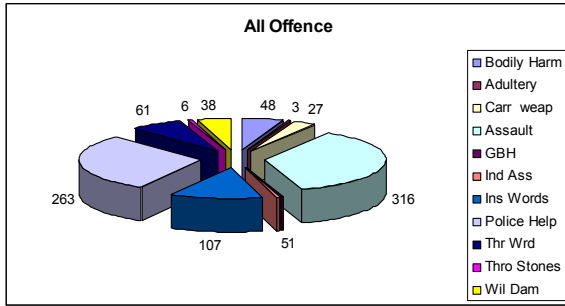
This report presents the results of a desk review conducted to assess if, how, and the degree to which the national laws of Samoa comply with the Convention on the Elimination of All forms of Discrimination against Women. The chapter examines and assesses Samoa's legislative compliance with CEDAW rather than a real or actual equality.

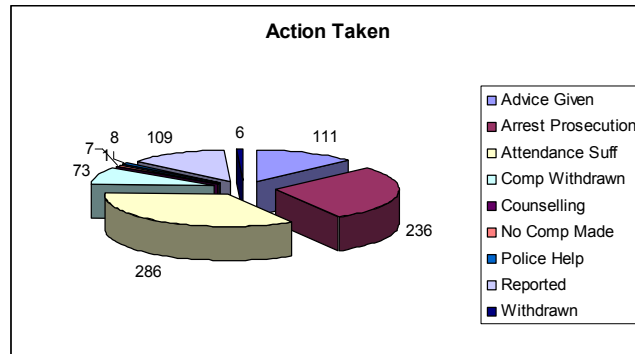
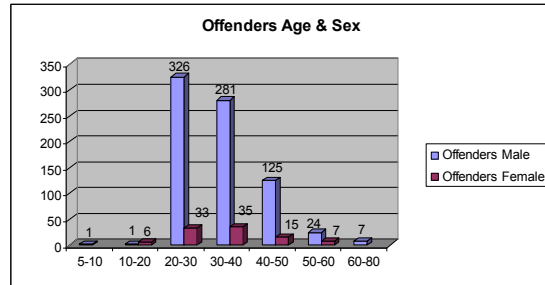
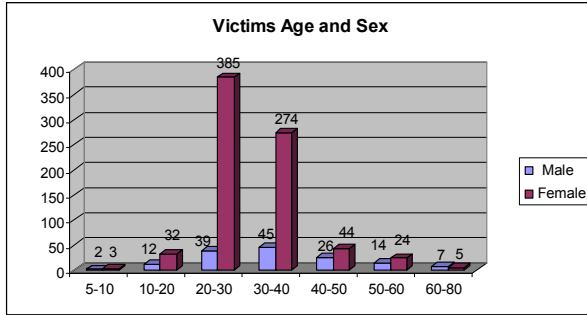
2. Statistics relating to the Incidence of VAW in SAMOA.

- (a) Domestic Violence Unit Statistics – Ministry of Police, Prisons and Fire Brigade

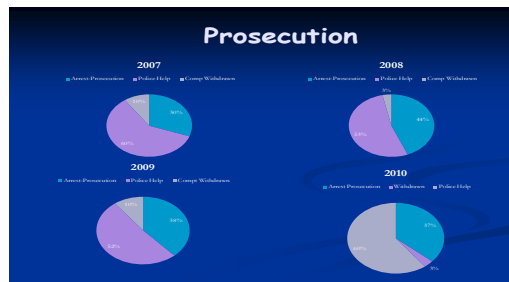
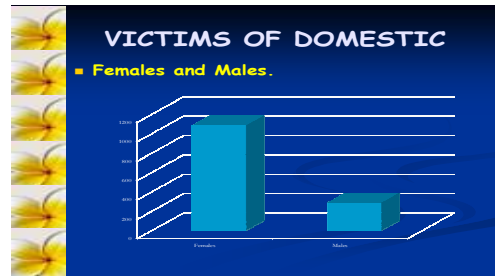
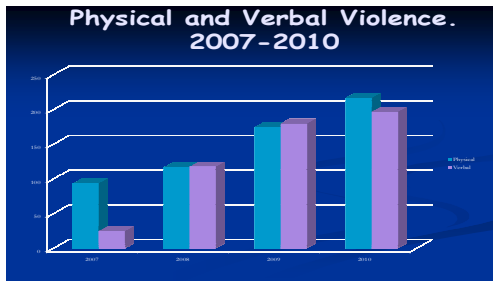
The Domestic Violence Unit database showed that 842 domestic violence cases have been recorded from 2007 to date. These cases are only the accounts of those incidents with penalties from five years and under and cases that have been reported to the Ministry. Serious offences which accounts to more than five years penalty are dealt with at the Criminal Investigation Division of the Ministry. Of the 842 cases 111 were given advice, 236 were arrested and prosecuted, 109 reported with no actions made, 286 attendance suff, 73 complaints withdrawn, 1 was counseled, 7 cases without no complaints made, 8 were only referred to for police help and 6 were withdrawn. The above statistics is an account of all the domestic cases reported in which the majority been women victimized or been abused by their husbands.

In addition to the statistics from the Ministry of Police, Prisons and Fire Brigade statistics extracted from a WHO Multi Country study showed that 24% of Samoan women experienced severe violence from their intimate partners while 17% experienced moderate physical violence. 58% experienced physical violence, 12% experienced sexual violence while 30% suffered a combination of the two. 62% of women older than 15 years experienced non partner violence.





From the Domestic Violence Unit of the Ministry of Police, Prisons and Fire Brigade during the National VAW Consultation:



(b). Samoa Victim Support data.

Samoa Victim Support is very important because it believes that it is the heart that continues to beat for its many victims. It is a Non Governmental Organisation initially set up to care, support and help victims of social crimes. SVSG has extended its arms to embrace victims in any area of need whether it be domestic violence, harassment in the workplace or victims of poverty.

| Cases | 2005 | 2006 | 2007 | 2008 | 2009 |
|--------------------------|-------------|-------------|-------------|-------------|-------------|
| Carnal Knowledge | | 3 | 4 | 7 | 6 |
| Domestic Violence | | 15 | 29 | 52 | 56 |
| Domestic Problems | | 7 | 11 | 14 | 19 |
| Incest | 4 | 4 | 5 | 7 | 8 |
| Indecent Assault | 4 | 8 | 10 | 14 | 14 |
| Rape | 4 | 14 | 16 | 15 | 14 |
| Sexual Abuse | | 4 | 8 | 10 | 13 |
| Sexual Harassment | | 3 | 5 | 6 | 6 |

Presentation during the National VAW Consultation indicated that –

As from the last annual general meeting in September 2009 up to 15 December 2010 a total number of 632 different cases were reported in and were successfully handled by the office. A total of 49 sexual cases were registered during this period compared to 52 cases recorded in September 2008 to September 2009. A summary of these cases are shown in the table below.

CASES:

| | |
|------------------|----|
| Rape | 18 |
| Incest | 17 |
| Carnal Knowledge | 8 |

| | |
|---------------------------------------|----|
| Sodomy | 1 |
| Incest Assault | 3 |
| Indecent Acts | 2 |
| Maintenance and Custody | 93 |
| Domestic Violence and family Disputes | 87 |
| Assault | 35 |
| Child Abuse | 12 |
| Assistance with restraining Order | 4 |
| Abduction/Kidnapping | 11 |
| Murder | 1 |
| Threatening Words | 1 |
| Insulting words | 2 |
| Stop notice on husband | 5 |

(c). Mapusaga o Aiga data

Samoa’s commitment to combating Violence against women was also seen through establishing a Non Government organisation namely the Mapusaga o Aiga: **“Family Haven”** in 1993, with the mission of leading Samoa towards violence free families. Below is a record of all the domestic cases handled by Mapusaga o Aiga.

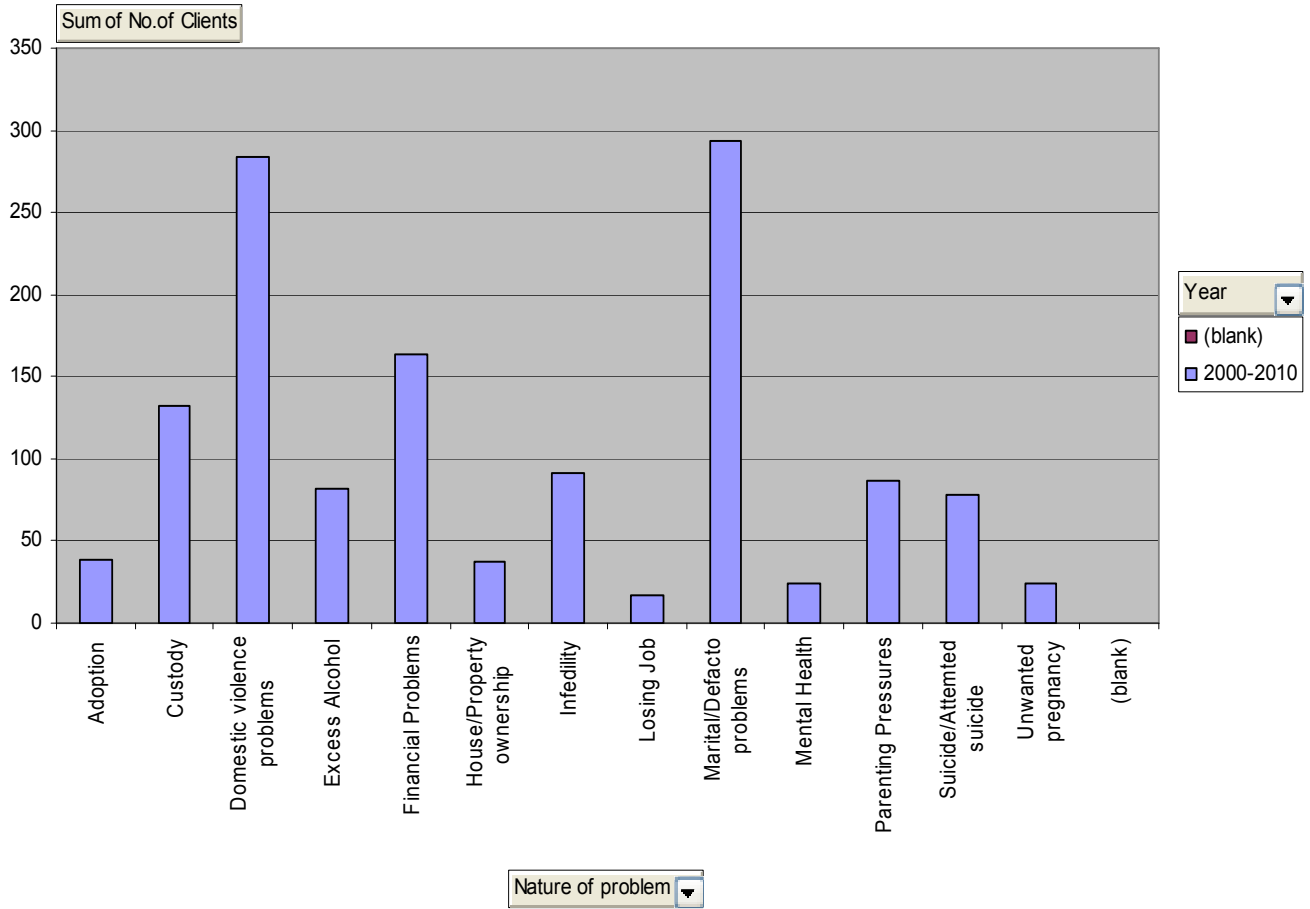
Provisional Results – 740 clients from 2000 – 2010

- 74% women & 26% men
- 38yrs(39), 35yrs(35), 19yrs(29)
- 38% unemployed, 14% employed, 20% self employed, 28% unknown/other

Types of DV cases/marital problems

- Sexual – 63clients
- Verbal – 227 clients
- Mental – 226clients
- Physical – 181clients

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(d). Court Cases from the Ministry of Justice, Courts and Administration/

The Pacific Islands Law Officers Network Conference Country's Country Report 2010 presented by the Attorney General of Samoa gave a brief summary of the number of court cases. The report stated that in the year (2010) alone the prosecution had conducted a number of prosecution hearings and sentencing as well. The data on the prosecution hearings are as follows:

Sentencing List sorted by Charges:

- Rape – 8
- Attempted Rape – 3

- Indecent Assault – 10
- Carnal Knowledge – 8
- Possession of Narcotics – 60
- Theft as a Servant – 30
- Theft – 8
- Obtaining Credit by Fraud – 2
- Robbery – 6
- Murder – 5
- Manslaughter – 11
- Attempted Murder – 6
- Grievous Bodily Harm – 9
- Actual Bodily Harm – 5
- Offences relating to possession of firearm – 5
- Fishing of undersized fish/possession/selling – 3

Total – approximately 179 matters already sentenced not including those still pending or have been adjourned.

The following statistics are the number of matters that were before the courts for hearing.

Hearing Matters – These are matters that have already been heard in Court:

- Murder – 14
- Attempted murder – 5
- Manslaughter – 3
- Grievous Bodily Harm – 5
- Actual Bodily Harm – 5
- Abduction – 2
- Procuring Abortion – 2
- Rape – 17
- Attempted rape – 9
- Indecent Assault – 20
- Carnal Knowledge – 15
- Sodomy – 3
- Theft as a Servant – 25
- Theft – 6
- Robbery – 9
- Appeals in the Supreme Court – 5
- Conspiracy to defeat justice – 2
- Possession – 32
- Disputed Summary of Facts Hearings – 5

Total: approx 184 matters

The above statistics of cases have been cited from records / databases taken after every case, however it does not include the numerous cases which are prepared for trial but for some reasons, get adjourned by the Court or by an application by defense counsel or Prosecution.

(e). Demographic and Health Survey 2009.

The 2009 SDHS is a nationally representative sample survey designed to provide information on population and health issues in Samoa. The primary goal of the survey is to develop a single integrated set of demographic and health data pertaining to the population of Samoa.

The Survey was an initiative of the Ministry of Health under its Health Sector Wide Approach program. It collected national and regional level data on fertility and contraceptive use, maternal and child health, adult health, tuberculosis, and HIV/AIDS and other sexually transmitted diseases. The survey obtained detailed information on these issues from women of reproductive age and on certain topics and from men as well.

The survey gathered information on women and men's attitudes towards wife beating, a proxy for women's status. Respondents who believe that a husband is justified in hitting or beating his wife for any of the specified reasons may believe women to be low in status both absolutely and relative to men. Such a perception could act as a barrier for women in accessing health care for themselves and their children, and could affect women's attitude towards contraceptive use as well as their general well being.

Approximately six in ten women (61%) think that a husband is justified in beating his wife for at least one of the five specified reasons. One in seven women (14%) think that wife beating is justified if the wife burns the food and one in six women think that beating is justified if the wife refuses to have sexual intercourse with her husband (17%) or if she argues with him (18%). Three in ten women say wife beating is justified if the wife goes out without telling him, and nearly half (48%) think that beating is justified if the wife neglects the children.

In addition the survey indicated that men are less likely (46%) than women (61%) to think that a husband is justified in beating his wife for any of the specified reasons. 5% of men aged 15 – 49 think that a husband is justified in beating the wife if she refuses to have sex with him, compared with 17% of women.

(f). Samoa Law Reform Commission.

The Crimes Ordinance Report issued in June illustrated that statistics from the Ministry of Police & Prisons show that the number of sexual offences where convictions were recorded in the Supreme Court rose from five in 2004 to 28 in 2007. The Ministry of Police and Prisons statistics indicated that 17 people were convicted of sexual offences in 2005 whilst the Ministry of Justice and Courts Administration report indicated the statistics of 44 people imprisoned for sexual offences in 2005.

3. Government Policy statements or plans relating to VAW.

(a). Strategy for the Development of Samoa, 2008 – 2012: ENSURING SUSTAINABLE ECONOMIC AND SOCIAL PROGRESS.

The Strategy for the Development of Samoa 2008 – 2012 identifies 7 goals to Samoa's development for the five year period. One of the goals is to improve the Economic and Social Wellbeing and Improved Village Governance. One of this goals objective evident the Government of Samoa's commitment through the Ministry of Women, Community and Social Development to change legislation on issues relating to violence against women in villages, homes and communities.

(b). National Policy for Women of Samoa 2010 – 2015.

Samoa women have contributed significantly through their multiple roles in framing Samoa's sustainable development context to date. They have served and continue to do so, as producers, consumers of wealth, protectors of family lineage and cultural heritage, peace makers and frontline ambassadors for Samoa. While much progress has been made to women's development over the years, existing evidence and documentation show that women continue to be marginalised in certain areas of development as a result of increasing health problems, the prevalence of domestic violence, issues of women with disabilities, economic downturns and natural disasters. Consequently, there is a need to provide clear direction of actions by government and its partners through a Policy for Women, to ensure that services and programs are targeted to address issues impacting on the attainment of quality life for women and girls.

Violence against women was identified as one of the factors affecting the ability of women in contributing to the sustainable development of communities. The National Policy for Women 2010 – 2015 seeks to address all aspects for reduction of VAW. It includes measures for (i) developing relevant legislation to curb all forms of violence against women and girls (ii) strengthening interagency collaboration and response systems to address VAW

(iii) developing educational programs in villages to address VAW, (iv). Strengthening legal protection, counselling support for victims of violence and availability of free legal assistance and law reform affecting domestic relations and increased availability of free effective, formal alternative dispute resolution mechanisms for family law matters.

- (c). National Plan of Action for the Advancement of Women in Samoa 2008 – 2012, Ministry of Women, Community and Social Development.

The National Framework for the Advancement of Women is informed by the National Policy on Women 2007-2017. This Framework identifies the priority areas and key outcomes for women to be achieved by the end of 2012 in which VAW is one of its core components. The Framework recognises ongoing and existing efforts towards the advancement of women in line with the Strategy for the Development of Samoa, the Millennium Development Goals, the Convention on Elimination of All Forms of Discrimination against Women (CEDAW), the Beijing Platform for Action, the Pacific Platform for Action and the Commonwealth Plan of Action on Gender Equality.

- (d). National Steering Committee on VAW.

To combat violence against women, a Gender Based Violence Steering Committee was established in the latter half of 2008. The Committee is co-ordinated by the Ministry for Women, Community and Social Development. The key members are government and NGO members including the CEO of the MWCSO, the AG, CEO Ministry of Health, Ministry of Education, Sports and Culture, Mapusaga o Aiga, SUNGO and Samoa Victim Support. The purpose of the Committee is to provide strategic policy direction and oversight and monitoring of the GBV and VAW projects. It is also responsible for policy guidance and advice in the development of legislation addressing domestic violence in Samoa.

- (e). Men against Violence Advocacy Group.

One of the initiatives of the Ministry of Women, Community and Social Development to eliminate violence against women was through formalising the Men Against Violence Advocacy Group. The objective of this group is to have village leaders/mayors take the lead in raising awareness and educating communities of the impacts of violence in communities but especially eliminating violence against women and children. This group was formalised in 2008 with 15 active members.

3. Current legislation relating to VAW

(a). Crimes Ordinance 1961

This enactment was made and passed in the year 1961, and has been amended various times since its enactment. Various provisions of the Crimes Ordinance have direct relevance to the issue of Domestic Violence. In particular, the provisions relating to crimes against the person, and also sexual crimes have a significant bearing on the types of existing criminal behaviour which affect victims of domestic violence. It is these provisions which are used by the Police to charge offenders of domestic violence.

Of particular and specific mention are the following crimes:

In relation to Sexual Crimes, the following provisions are relevant:

- a. Section 49. which relates to Incest
 - b. Section 50 which relates to sexual intercourse by man with young related girl living in his family
 - c. Sections 46 to 48. which relates to the crime of Rape
 - d. Section 51 which relates to sexual intercourse with a girl under 12
 - e. Section 52 which relates to indecency with a girl under 12
 - f. Section 53 which relates sexual intercourse or indecency with a girl between the ages of 12 and 16
 - g. Section 54 which relates to indecent assaults on woman or girl
 - h. Section 55 which relates to conspiracy to induce sexual intercourse
 - i. Section 56 which relates to inducing sexual intercourse under the pretence of marriage
 - j. Section 57 which relates to having sexual intercourse with idiot or imbecile woman or girl
 - k. Section 58 which relates to adultery by married persons
 - l. Section 58A which relates to adultery with a married woman
 - m. Section 58E which relates to Sodomy
 - n. Section 58F which relates to Bestiality
 - o. Section 58G which relates to attempts to commit sodomy or bestiality
 - p. Section 58H which relates indecency with animal.
- b) In relation to crimes against the person, the following is entailed in the Crimes Ordinance, and of particular significance are the following provisions.
- a. Sections 59 to 71 which relate to murder and manslaughter
 - b. Sections 72 to 74 which relates to infanticide and abortions

- c. Sections 74 which relates to Bigamy and crimes relating to multiple marriages.
Bigamy defined
- d. Section 75 which relates to a crime for counselling suicide
- e. Section 76 relating to duty of a care giver to provide the necessaries of life
- f. Section 77 relating to a duty of parent or guardian to provide necessaries of life
- g. Sections 78 to 82 which relate to the varying degrees of Assaults, threats and omissions which could effectively injure a person
- h. Section 83 to 83B which relates to the crime of abduction of woman or girl and kidnapping.

Sections 46-83 create the offences relating to assault that are currently used for prosecuting offenders who commit VAW. There is no offence that specifically deals with domestic violence. Domestic violence against women cases is also covered under the Crimes Ordinance Act 1961 but there is no specific legislation on violence against women. Sexual offences are covered by the Crimes Act part 6 SS. 46 -58.

Forms of sexual assault include rape, indecent assault, incest and sexual intercourse with a related girl under age 20 by a man responsible for her care and protection. Samoa does not recognise the category marital rape relying on the common law principle that a man may always assume his wife's consent to sexual intercourse and therefore cannot be guilty of raping her

A Restraining Order can be obtained from a court to prevent a woman's husband from beating her, going near her, telephoning her or otherwise bothering her. However courts will only accept applications for Restraining Orders if they are accompanied by application for maintenance, custody or divorce and Perpetrator of domestic violence can be charged with common assault, but there is no specific legislation relating to domestic violence.

6. Current Reform initiatives relating to VAW in Samoa.

(a). Family Safety Bill

Samoa's commitment to reduce violence against women is evident through drafting a legislative framework which addresses domestic violence against women and a legislative which protects the whole family. This is the Samoa Family Safety Bill which is still in its draft form and awaiting cabinet approval. The Bill is confined to providing legislative basis for Protection Order only.

(c). Crimes Ordinance 1961

The Crimes Ordinance Act 1961 is one legislations which was currently reviewed by the Law Reform Commission after its establishment. Many of the offences are contained in the Crimes Ordinance 1961, a statue that remained almost unchanged for close to 50 years. In November 2008 the Law Reform Commission was given a major reference into criminal lay by the cabinet and the Attorney General. The reference includes

the review and reform of the Crimes Ordinance, the Criminal Procedures Act 1972, the Evidence Ordinance 1962 and the development of a Sentencing Bill.

The Commission has released the final report of this review which sets out its recommendations for reform of the Crimes Ordinance 1961. These recommendations were based on the need for Samoa's criminal law to be relevant for modern times and in line with international trends. However, Samoan custom and traditions have remained paramount considerations. Changes have only been recommended where the Commission considers that they would enhance Samoa's society, culture and economy, and better meet the needs of the Samoan Government and community.

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Ministry of Women, Community and Social Development. 2008. *National Policy for Women of Samoa 2010 – 2015*, Apia.

Websites:
www.bayefsky.com

Concluding Observations CEDAW – Samoa – January 2005.

www.pilonsec.org –

The Pacific Islands Law Officers Network Conference Country's Country Report 2010

www.ag.gov.ws

Crimes Ordinance Report 1961

Information from Non Governmental Organisations:

Mapusaga o Aiga (Family Haven)

Samoa Victim Support Group

Ministry of Women, Community and Social Development.

Ministry of Police and Prisons

APPENDICES:

Appendix A - Articles and reports on VAW

This appendix will include hard copies of all the articles listed in 1 above.

Appendix B - Statistics relating to the Incidence of VAW

This appendix will include hard copies of all the documents listed in 2 above.

Appendix C - Government Policy statements or plans relating to VAW

This appendix will include hard copies of all the documents listed in 3 above.

Appendix D- Human Rights Reporting and Monitoring

This appendix will include hard copies of all the documents listed in 4 above.

Appendix E - Current legislation relating to VAW

This appendix will include hard copies of all the documents listed in 5 above.

Appendix F - Current reform initiatives

This appendix will include hard copies of all the documents listed in 6 above.