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Sexual and reproductive health and gender-based violence in Samoa:
A review of policy and legislation

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Acronyms

AIDS	Acquired immunodeficiency syndrome
ANC	Antenatal care
CEDAW	Convention on the Elimination of All Forms of Discrimination against Women
CRC	Convention on the Rights of the Child
CRPD	Convention on the Rights of Persons with Disabilities
CSE	Comprehensive sexuality education
DFAT	Australian Department of Foreign Affairs and Trade
DRM	Disaster risk management
EmOC	Emergency obstetric care
FLE	Family life education
GBV	Gender-based violence
GBViE	Gender-based violence in emergencies
GFATM	Global Fund to Fight AIDS, Tuberculosis and Malaria
HIV	Human immunodeficiency virus
HPV	Human papillomavirus
ICESCR	International Covenant on Economic, Social and Cultural Rights
ICPD	International Conference on Population and Development
IUCD	Intrauterine contraceptive device
LGBTIQ	Lesbian, Gay, Bisexual, Trans, Intersex and Queer[1]
MISP	Minimum Initial Service Package
MoH	Ministry of Health
MWCSD	Ministry of Women, Community and Social Development
NGO	Non-government organisation
NHS	National Health Service
PNC	Postnatal care
SAF	Samoa AIDS Foundation
SDGs	Sustainable Development Goals
SFA	Samoa Fa'afafine Association
SFHA	Samoa Family Health Association
SGBV	Sexual or gender-based violence
SRCS	Samoa Red Cross Society
SRH	Sexual and reproductive health
SRHiE	Sexual and reproductive health in emergencies
SRHR	Sexual and reproductive health and rights
STIs	Sexually transmitted infections
SVSG	Samoa Victims Support Group
UNAIDS	Joint United Nations Programme on HIV/AIDS
UNDP	United Nations Development Programme
UNFPA	United Nations Population Fund
UHC	Universal health coverage
VAW	Violence against women
WHO	World Health Organisation

1 It is recognised the LGBTIQ is contested as a descriptor, with some activists rather promoting a focus on the diversity of sexual orientation and gender identity and expression (SOGIE) in any community. However, LGBTIQ is most commonly used in policy documents in the Pacific region and is therefore what we have used in these reports.

Executive summary

In 2015, the United Nations set an ambitious agenda of Sustainable Development Goals (SDGs) to address poverty, injustice, and environmental destruction. Through the SDGs, nations committed to gender equality and health and notably established universal access to sexual and reproductive health and rights (SRHR) as a global target. Additionally, and relatedly, the SDGs include a specific target to 'eliminate all forms of violence against women and girls in public and private spheres, including trafficking and sexual and other types of exploitation' (UN General Assembly, 2015). While laws and policies alone cannot achieve these targets, scholars and practitioners agree that an enabling legal and policy environment continues to play an important role in advancing SRHR and eliminating gender-based violence (GBV).

Review of the policy and legal landscape for realising SRHR and preventing and responding to GBV is a high priority for the Pacific region. Governments in the Pacific have committed to international and regional strategies to address SRHR and GBV, but there is a need to analyse existing national legislative and regulatory frameworks to identify the ways policy and legislation may work to support SRHR and prevent GBV, or conversely may undermine appropriate services and responses. For instance, many Pacific countries have plural legal systems that draw upon multiple sources of law, which may lead to conflict between statutory and customary law. This can particularly impact policies and laws related to SRHR and GBV (McGovern et al. 2019; Garcia-Moreno et al. 2015). Consequently, UNFPA Pacific commissioned a review of SRH and GBV related legislation and policy in six Pacific countries – Fiji, Kiribati, Samoa, Solomon Islands, Tonga and Vanuatu. This report summarises findings from the review undertaken for Samoa and offers key legislative and policy recommendations to help promote SRHR and reduce GBV in Samoa.

Background

Samoa consists of 4 inhabited islands (Savaii, Upolu, Manono, and Apolima). The country gained independence in 1962 and is a parliamentary democracy. Economically, Samoa is highly vulnerable to external shocks due to limited resources, frequency of disasters, and its small population. Additionally, increasing urbanisation puts pressure on services and infrastructure, and equitable service provision across rural and urban areas remains a challenge. Domestically, Samoa's *Constitution* notably includes provisions for Samoan customs as well as democratic laws, and the country maintains a system of local village governance. At the international level, Samoa is a signatory to the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), Convention on the Rights of the Child (CRC), and the Convention on the Rights of Persons with Disabilities (CRPD) These distinct factors all impact policies and legislation related to SRHR and GBV in Samoa.

Methods

The purpose of this study was to identify and analyse policies and legislation related to SRHR and GBV in Samoa. The study consisted primarily of a desk-based review, which examined national legislation, policies, peer reviewed literature, and other published reports relevant to SRHR and GBV in Samoa. Document search and retrieval occurred from July 2020 to July 2021. The second stage of the review involved a content analysis of the included documents. The analysis focused on key domains and corresponding indicators adapted from themes under SDG Indicator 5.6.2 and commitments under international frameworks and conventions, including those relevant to priority populations outlined in the CRPD and the CRC.

Key findings

Gender equality and non-discrimination

- Review findings suggest the *Constitution* in Samoa could include more explicit protections for gender equality and non-discrimination. For example, the *Constitution* asserts that it will not 'prevent the making of any provision for the protection or advancement of women and children', but it does not include a comprehensive definition of gender equality. The *Constitution* also asserts that all people are equal before the law but does not explicitly prohibit discrimination based on gender, sexual orientation, disability, or HIV status.

- There are some notable legislative protections outside the *Constitution*, including the *Labour and Employment Relations Act 2013* which prohibits direct and indirect discrimination against an employee (or applicant) based on ethnicity, race, colour, sex, gender, religion, political opinion, national extraction, sexual orientation, social origin, marital status, pregnancy, family responsibilities, real or perceived HIV status, or disability. *The Mental Health Act 2007* also includes the elimination of discrimination against persons with a mental disorder as one of its objectives.

SRHR

- Review findings indicate that current legislation and policies in Samoa partially promote SRHR, but critical gaps remain. *Samoa's National Sexual and Reproductive Health Policy 2018-2023* (Ministry of Health) presents a comprehensive package of services, encompassing maternal health (including family planning, antenatal care, and essential obstetric care), fertility regulation (including contraception), the prevention and control of sexually transmitted infections (including HIV) and GBV. The policy noticeably excludes the provision of safe abortion likely due to abortion's legal status in Samoa. *The Strategic Plan of Action 2018-2023* accompanies the policy, which outlines key outputs, targets, and costing, but the budget allocation is low to achieve many of the identified targets.

- *The National HIV, AIDS & STI Policy 2017-2022* guides the response to HIV and sexually transmitted infections in Samoa. The policy specifies that testing must be voluntary and with informed consent, but there are notably no legislative provisions guaranteeing access to voluntary counselling, testing, treatment, and care. The policy also states that children under 18 require parental consent to receive testing (including HIV and sexually transmitted infections), which could be a barrier to young people's SRHR.

- In the domain of contraception and family planning, the Ministry of Health is required to provide health preventive services, including reproductive health. *The National SRH Policy 2018-2023* also specifies the provision of family planning services. *The Samoa Essential Medicines List 2019* includes male and female condoms, contraceptive implants (levonorgestrel, IUDs), and emergency contraception. Additionally, *the National SRH Policy 2018-2023* and the *Health Sector Plan* include goals to reduce the adolescent birth rate. While there are no legislative restrictions on contraceptive access, minors and women with disabilities lack important protections related to consent, and there is anecdotal evidence that third party authorisation for contraceptives is being implemented in practice.

- There are no laws or regulations that guarantee specific access to maternal and newborn care, although *the National SRH Policy 2018-2023* lists access to a comprehensive package of maternity care (including PNC and ANC, skilled birth attendants, and EmOC) as a key focus.

- There are various policy and legal gaps related to abortion. *The Crimes Act 2013* criminalises abortion in Samoa but allows it in the first 20 weeks of pregnancy in cases that pose serious danger to a woman's life, physical or mental health. A key gap identified is the lack of clear clinical and policy guidance to reduce barriers and support access to safe abortion care to the full extent of the law to protect both women and medical practitioners. There are also no legislative or clear policy provisions guaranteeing access to post abortion care.

- Under Samoan legislation, female employees are entitled to four weeks of maternity leave, and men are entitled to a minimum of five days of paternity leave. However, female public sector employees have access to 12 weeks of maternity leave, suggesting a need to revise legislation and ensure the same conditions for women working in the private sector.

GBV

- Review findings imply that Samoa's current legislative and regulatory frameworks partially contribute to an enabling environment to reduce GBV, but barriers remain. A variety of policies underpin Samoa's strategy to reduce GBV. The Ministry of Women, Community and Social Development (launched the *National Policy on Family Safety: Elimination of Family Violence 2021-2031,* which is the first standalone national policy addressing family violence (the most prevalent form of GBV in Samoa). While the policy includes an Implementation Plan and briefly outlines an annual workplan and budget process, it lacks necessary detail. Additionally, the *Samoa Interagency Services Guide (IESG) to Gender-Based Violence and Child Protection (2021)* helps support a multisectoral response to GBV, but it does not require a commitment from key GBV service providers to adhere to guidelines. Finally, there is a need to improve GBV data collection, specifically focusing on data standardisation.

- Desk review findings also suggest a need to revise the legal and policy framework around sexual violence. For instance, the *Crimes Act 2013* narrowly defines rape as involving 'non-consensual penetration of the female's genitalia by male penis' and distinguishes rape from non-consensual 'sexual connection', which has a much broader definition.

- There are also distinct legal challenges in Samoa since its Constitution does not clearly establish the relationship between customary and statutory law. Findings indicate that customary reconciliation such as ifoga (traditional apology) has resulted in a sentence reduction in cases involving violence against women.

- In terms of the health response to GBV, there has historically been a lack of clinical guidelines to help identify and manage GBV cases in Samoa. At the time of writing this review however, *Standard Operating Procedures for Clinical Management of Rape Sexual Violence and Gender-based Violence* were finalised, which draw from WHO best practices. This should help establish clear procedures, roles, and responsibilities for providers across the health care system in Samoa.

SRH and GBV in key populations

- Adolescents and youth: While most relevant policies and plans target young people as a key population group, there are various legal and policy gaps in Samoa. For example, education is compulsory for boys and girls, but there is no legislation that mandates the integration of comprehensive sexuality education (CSE) into the national school curriculum. Additionally, the law allows for marriage of women aged under 18 years (the minimum age is 16 years), and forced marriage is not criminalised. There also is currently no comprehensive legislative framework for the protection of children, and it is unclear how the *Child Care and Protection Bill 2013* is progressing through to the Legislative Assembly.

- People with disabilities: Current legal and policy frameworks inadequately address the needs of people with disabilities in Samoa. There are no legislative protections for the SRHR of people with disabilities (including the right to reproductive choice). Similarly, while some policies and plans identify people with disabilities as a key population group (e.g. MWCSD Strategic Corporate Plan and the IESG), this often does not translate into specific actionable guidelines or targets to improve GBV and SRH service provision for people with disabilities.

- LGBTIQ people: There is limited legal and policy support for the needs of LGBTIQ people in Samoa. For instance, the *Crimes Act 2013* criminalises sex between men (including consensual sex), which may impede men's access to SRH services and protection from GBV. The law is also silent on the status of and protections for other gender and sexually diverse groups. There are limited attempts to integrate LGBTIQ people into national policies *(e.g. the National Policy on Family Safety: Elimination of Family Violence 2021-2031)*.

- Sex workers: Findings indicate there are extremely limited policy provisions related to SRH and GBV for sex workers, likely due to their illegal status in Samoa. *The National HIV, AIDS & STI Policy 2017-2022* illuminates this policy challenge, which identifies sex workers as a key population group and acknowledges the need to maintain confidentiality to ensure that sex workers' use of prevention services does not expose them to legal risk. Overall, criminalisation creates barriers in accessing SRH services for sex workers and produces additional vulnerabilities to GBV.

Humanitarian and disaster contexts

- Current policy and legislative frameworks in Samoa partially support the promotion of SRH and reduction of GBV in humanitarian and disaster contexts. *The National Disaster Management Plan (NDMP) 2017-2020* includes gender and disability as a cross cutting issue and stipulates the provision of reproductive health services. The NDMP also requires costing for health promotion and health management of GBV. However, there are opportunities for improvement. For example, the Minimum Initial Service Package (MISP) is not explicitly endorsed in disaster policy. Additionally, the *Samoan National SRH Policy 2018-2023* lacks an explicit policy commitment to SRH in emergencies (SRHiE), MISP or GBV in emergencies (GBViE).

Conclusions and recommendations

This desk review has revealed that Samoa has made good progress towards creating an enabling legislative and policy environment for universal access to SRH and prevention and protection from GBV.

It is important to recognise that ensuring accountability for the full implementation of existing laws and policies is as critical as developing new legislation and policies to support SRHR and eliminate GBV. Accountability should be in the form of sound monitoring and evaluation frameworks and regular data collection, periodic review against indicators, timely and comprehensive reporting on international commitments.

Based on this preliminary desk review, several opportunities to strengthen policy and legislative responses include:

General recommendations

- Ensure that any future legislative reform is approached comprehensively and involves consultation with civil society and key population groups, including gender impact assessment to understand possible unintended consequences.

- Consider reviewing the *Constitution*, ensuring it:
  - Aligns with Samoa's obligations as a signatory to international human rights treaties and conventions, specifically CEDAW, CRC and the CRPD.
  - Includes a commitment to the principle of gender equality.
  - Protects against discrimination based on sex, gender/gender identity, sexual orientation, age, disability, marital status, and health status.
  - Provides an enabling environment for the recognition to the right to health generally and of SRHR for all specifically.

- Scope the feasibility of a gender equality and inclusion bill that requires a positive obligation to promote structural gender equality and a removal of current legislative discrimination based on gender, age, sex, status, occupation, disability, and identity. Consider Gender in Emergencies and requiring all public entities to embed gender transformative and inclusive disaster preparedness, climate change resilience and response into their policies.

- In line with *National Policy on Disability 2021-2031* targets, harmonise Samoa laws with the CRPD through developing a disability bill for Samoa. This should enshrine the right to live free from violence and the right to SRHR (including reproductive choice).

- Conduct further research in partnership with persons with disabilities in Samoa to identify barriers related to SRHR and GBV to inform future law reform and policy development.

- Ensure institutional mechanisms are resourced to allow effective planning, implementation, monitoring and review of SRH and GBV law and policy including the Ministry of Health and Ministry of Women, Community and Social Development coordination bodies (e.g. the Ending Violence Against Women [EVAW] Taskforce) and monitoring bodies (Samoa Law Reform Commission and National Human Rights Institution).

- Strengthen data collection mechanisms to support monitoring and evaluation of policy and implementation to ensure annual targets are met and allow evidence-based reform.

SRHR recommendations

- Consider legislating for guaranteed access to contraception (including emergency contraception); family planning and maternal health services; and voluntary HIV & STI testing, counselling and treatment; with a specific directive on ensuring access for adolescents and youth and marginalised population groups. Legislation should include provision for full, free, and informed consent for services taking into consideration the evolving capacity of adolescents in line with international best practice.

- For future iterations of the National SRH Policy, consider incorporating:
  - A definition of comprehensive integrated SRH in line with the International Conference on Population and Development (ICPD) (for example the Guttmacher-Lancer Commission)
  - Specific provisions for key populations adolescents and youth, people with disabilities, LGBTIQ communities and sex workers, recognising the unique barriers they experience to accessing SRHR
  - Ensure that the policy clearly links to SRHiE acknowledging the importance of prepositioning and long-term preparedness, including the ability to pivot from ongoing integrated SRHR services to initial SRH services in emergencies (e.g. MISP)
  - Evidence based resourcing (e.g. health readiness assessments)
  - Recognise the important role of non-government organisations and ensure sustainable partnerships in the delivery of SRH services

- Review and develop new clinical guidelines on obtaining full, free, and informed consent for SRH health services providing consistency across services and facilities. Develop a resource for health professionals to use to assess children's competence to consent to treatments; provide training for children, parents, and health professionals to raise awareness and knowledge of the law; and consider introducing a new law to better embed the rights of competent children to consent, or refuse, treatment.

- Conduct further research into the impact, causes and consequences of unsafe abortion practices. Legislate for access to post abortion care regardless of the legality of abortion ensuring that women are not liable to prosecution.

- Review and develop new clinical guidelines on the delivery of safe abortion services to the full extent of the law, providing consistency across services and facilities (including facility readiness, risk assessment, counselling, referral, obligations and rights). Develop a resource for health facilities to use to provide training for health professionals to raise awareness and knowledge of the law.

- Review the *Labour and Employment Relations Act 2013* and consider revising section 44 to align it with the *Public Service Commission's Working Conditions and Entitlements Policy* and CEDAW by extending maternity leave in the private sector to 12 weeks. Paternity leave under the act should also be reviewed and increased to promote shared caring responsibilities between men and women. Further strengthen this by exploring the introduction of childcare options for all.

- Consider reviewing and legislating that CSE must be integrated into national curriculum and include minimum requirements for topics including drivers of gender inequality.

- Conduct further research on access to SRHR to inform evidence-based policy and decision making, including on the following issues:
  - The causes for the increase in maternal mortality. Consider changing the indicator used in relation to maternal mortality from MMR to monitoring the absolute number of deaths annually, to enhance the ability to track change over time
  - The unmet need for family planning and low rates of contraceptive use
  - The SRH needs of sex workers and the barriers they face in accessing services

- Revisit previous Samoa Law Reform Commission recommendations to review and repeal all criminal penalties and provisions that may be applied to criminalising sexual activity between consenting adults and adopt appropriate legislative measures to include sexual orientation and gender identity in equality and non-discrimination laws.

- Ensure adequate financing is built into policy to achieve universal access to SRH and dedicated workforce allocation to SRH service delivery.

- Strengthen partnerships with faith communities in relation to youth SRHR and family life education and include this in policy targets. This could include gender training at theological institutions and partnering in delivering SRH messages.

GBV recommendations

- To build off the new policies and plans developed by the Ministry of Women, Community and Social Development in 2021, ensure that interagency coordinating mechanisms are adequately resourced (budget and HR) and formalised (through an agreement). Strengthen the implementation plan or develop a 10-year action plan (gender-based violence) with a clear roadmap separating immediate action from longer term objectives. Early priorities should be:
  - engaging key stakeholders and agencies in planning targets and delegation of responsibilities under the national action plan;
  - establishing a formal agreement and mechanism under which key partners can deliver a comprehensive, multisectoral response to family violence that builds in accountability for minimum services standards and reporting;
  - Map and establish referral pathways in line with the IESG;
  - Establish an agreement around information sharing (consider legislating this in the future) maintaining victim/survivor safety and confidentiality;
  - Under the agreement establish a mechanism for data collection (minimum data set/ standardised forms, database);
  - Consider developing a sector wide risk management framework;
  - Consider establishing a sector capability framework under the national plan to set minimum training requirements across the sector (for specialist family violence roles, front line health workers, police, judiciary, village councils).

- Consider further research into trafficking, sexual exploitation, and prostitution in Samoa to inform evidence-based policy and legislation. Action signing of 'Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children', supplementing the United Nations Convention against Transnational Organized Crime.

- Address harmful interpretations of fa'a-Samoa in relation to gender roles and gendered violence in SRH, health and GBV policy, particularly in light of renewed focus on fa'a-Samoa in delivery of primary health care.

- Review the *Family Safety Act 2013* and broaden the definition of violence to include 'economic violence' in line with recommendations out of the National Public Inquiry into Family Violence, FSS and CEDAW reporting mechanisms.

- Review provisions in the *Family Safety Act 2013,* the *Community Justice Act 2008* and the *Evidence Act 2015* that allow factors to be taken into consideration by the judiciary when sentencing in cases of GBV, such as gender stereotypes and traditional apology (ifoga).

- Consider revising the *Crimes Act 2013* to bring the narrow definition or 'rape' in line with the definition of 'sexual connection'.

- Review mediation or alternative dispute resolution processes in the current legislative framework alongside traditional mediation and ensure there are explicit protections in place in cases of domestic violence.

- Urgently progress the *Child Care and Protection Bill 2013* through the Legislative Assembly.

- Revise the *Marriage Ordinance Act 1961* to legislate the equal minimum age of 18 for marriage requiring full, free, and informed consent of both parties to the marriage.

- Urgently roll out the Ministry of Health *Standard Operating Procedures for Clinical Management of Rape Sexual Violence and Gender-based Violence.*

- Ensure the *Taiala mo Auaunaga Fesoasoani mo Mataupu tau Puipuiga o Fanau (IESG)* is formally recognised and mandated in relevant cross cutting health, GBV and related policy.

Humanitarian and disaster recommendations

- Ensure there are specific provisions in relevant health and disaster policy and legislation to require the MISP for SRH objectives and related indicators to be embedded. Ensure this is situated in broader health policy that strengthens health systems as part of SRH preparedness and readiness. Continue to strengthen the sexual and reproductive health system in Samoa as a basis for SRHiE preparedness and address urgent identified gaps in capacity, investment and commodity supply.

- Ensure GBViE standards are embedded in policy and legislative frameworks and national cluster guidance to specific actors providing ongoing lifesaving services. Ensure new policies (for example the *National Policy on Family Safety: Elimination of Family Violence*) embed GBViE in relevant action plans. This should include government and non-government services. Include measures targeting the Prevention of Sexual Exploitation, Abuse and Harassment (PSEAH) in emergency contexts, including of and by workers in the response.

1 Introduction

1.1. Background and objectives

In 2016, the member states of the United Nations adopted seventeen Sustainable Development Goals (SDGs) to address poverty, discrimination, abuse, preventable deaths and environmental destruction. Universal access to sexual and reproductive health and rights (SRHR) is among the global targets of the SDGs, reflected primarily under the goals for health and gender equality (UN General Assembly, 2015). SDG Targets 3.7 and 5.6 in particular, call for universal access to SRHR, in line with the 1994 International Conference on Population and Development (ICPD) Programme of Action, the Beijing Platform for Action and their respective review conferences, as a precondition for achieving gender equality and empowering all women and girls (UNFPA, 1995; United Nations, 1995).

The Sustainable Development Goals (SDGs) also include a specific target, 5.2, to 'eliminate all forms of violence against women and girls in public and private spheres, including trafficking and sexual and other types of exploitation' (UN General Assembly, 2015). This is consistent with the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) (UN General Assembly, 1979), to which Samoa is a signatory, and the Declaration on the Elimination of Violence Against Women (UN General Assembly, 1993). Legislation criminalising violence against women scaffolds the right of women to live free from violence. While recognising that laws alone are not enough to eliminate violence, legal sanctions can act as a deterrent and legislation can be responsive to victims by providing protection and access to support services (Klugman, 2017). The realisation of sexual and reproductive health and rights (SRHR) requires that women and girls live free from violence, with research repeatedly demonstrating the close and consistent relationship between exposure to violence and sexually transmitted infections, unintended/unplanned pregnancy, abortion, an increased number of sexual partners, and women not having reproductive autonomy (Grose et al., 2021). In addition, particular violations of women's SRHR (including but not limited to forced sterilisation, forced abortion, forced pregnancy, and denial of sexual and reproductive health (SRH) services) may in themselves constitute forms of violence against women.

Many nation states, including a number in the Pacific, have plural legal systems in which multiple sources of law are drawn upon simultaneously, for example customary or religious law alongside statutory law. These plural systems can in some cases lead to contradiction in the interpretation or enforcement of laws and can undermine constitutional and statutory provisions that seek to address discriminatory or harmful practices. This is particularly evident in relation to gender justice, SRHR, and violence against women (McGovern et al., 2019; Garcia-Moreno et al., 2015). In some countries, constitutional laws and legal structures sustain and foster discrimination in relation to SRHR and gender-based violence (GBV), for example undermining women's ability to freely enter or leave marriage, requiring third-party authorisation to access services, restricting access to particular health services (such as safe abortion care), and by not recognising all forms of GBV. Legislative review has been recommended to address high rates of GBV and discrimination faced by women and minority groups in the Pacific (Chetty & Faletua 2015).

Stigmatisation and criminalisation of some sexual behaviour and SRHR services and entitlements influences people's health-seeking behaviour (UNFPA, 2019). This in turn impacts on demand for SRH services including family planning (ibid). Given the scope of factors that shape individuals' health care-seeking behaviour, it is vital to "promote policies, laws and initiatives that support non-stigmatizing, culture- and gender-responsive SRHR programmes and services" (UNFPA, 2019, p. 26). While governments in the Pacific have committed to

international and regional strategies to address SRHR and GBV, there is a need for further analysis of current barriers and enablers arising from existing national legislative and regulatory frameworks. The ability to achieve universal access to SRHR and elimination of GBV hinges on a supportive legal and policy environment.

A review of SRH and GBV legislation and policy has been undertaken in six Pacific Island countries including Fiji, Kiribati, Samoa, Solomon Islands, Tonga and Vanuatu. These reviews contribute to UNFPA's work in the Pacific that aims to support countries to meet human rights commitments, progress towards the SDGs, International Conference on Population and Development (ICPD) 1994 Programme of Action and ICPD25 national commitments, and commitments related to the UN High-level Meeting on Universal Health Care (2019).

Specifically, these reviews sought to address the following questions:

1. What national laws, regulations and policies exist in each of the six Pacific Island countries that govern (a) access to sexual and reproductive health; and (b) prevention of and protection from gender-based violence?

2. What are the key factors influencing universal access to sexual and reproductive health and prevention of and response to gender-based violence that may emerge as a result of existing legislative and policy frameworks in each of the six Pacific Island countries?

3. What are the legislative and policy gaps in the protection and promotion of the right to SRH and the elimination of GBV in each of the six Pacific Island countries?

This report provides a summary of findings from the review undertaken for Samoa and key recommendations for further legal reforms and policy strengthening in relation to SRHR and GBV.

1.2. Methods

This study was primarily a desk-based review and analysis of policies and legislation related to (a) sexual and reproductive health and rights and (b) intersecting gender-based violence in Samoa. The review encompassed national legislation, policies, peer reviewed literature and other published reports relevant to SRHR and GBV in Samoa (see references for full list of sources).

Legislation is used throughout the report to refer to legally enforced and enforceable Acts, Bills, subsidiary regulations and orders made under the Acts and the *Constitution*. Policies refer to Government documents that provide a policy statement, position or guidance and broadly includes policies, plans and strategies.

The documents were identified through a systematic search of relevant data bases including Scopus, HeinOnline, AGIS, and other online sources including Pacific Islands Legal Information Institute (PacLII databases). Refer to search terms in Annex 1.

Document search and retrieval was undertaken over the period April 2020 to July 2021.

Government websites were searched for up to date policies, legislation and reports, some linking directly back to PacLII. Lastly general internet searches were conducted to capture any other relevant reports and grey literature. UNFPA country focal points were contacted to provide assistance in accessing any policy documents, legislation or relevant reports not accessible online. Documents were categorised by type and analysed for relevance.

Table 1: Documents reviewed during the development of the Samoa report

Source		Results	Omitted	Reviewed
Databases	Scopus	44	12	32
	HeinOnline	15		15
	AGIS	14		14
	Index to Legal Periodicals and Books (H.W. Wilson)			
Book chapters				2
Grey literature				43
Total				**106**

The second stage of the review involved a content analysis of included documents. Analysis was completed according to key domains and corresponding indicators (refer to Table 4: Summary of the sexual and reproductive health and gender-based violence desk review under Section 3) adapted from:

1. Themes under SDG Indicator 5.6.2 (Number of countries with laws and regulations that guarantee full and equal access to women and men aged 15 years and older to sexual and reproductive health care, information and education) including access to maternity care, contraception and family planning, comprehensive sexuality education [CSE] and information, sexual health and wellbeing).

2. Commitments under international frameworks and conventions, particularly the 1994 Programme of Action of the ICPD and respective review conferences and the Convention on the Elimination of all Forms of Discrimination Against Women (CEDAW), general recommendations 19 (1992) & 35 (2017) provisions intersecting with SRHR.

While it is beyond the scope of this report to review commitments in relation to all international and regional instruments to which Samoa is party, the report does consider commitments relevant to priority populations as outlined in the Convention on the Rights of Persons with Disabilities (to which Samoa acceded in 2016), and the Convention on the Rights of the Child (to which Samoa acceded in 1994).

Additionally, feedback was sought through a validation workshop in December 2021 with relevant stakeholders in the field of SRHR and GBV in Samoa, which aimed to ensure the accuracy and comprehensiveness of the report, and relevance of recommendations.

1.3. Limitations

There are a number of limitations of this review that need to be considered when interpreting findings and recommendations:

- The review is focused on the existence (or otherwise) of SRH and GBV policy and legislation. It was beyond the scope of the review to explore the implementation, enforcement and effectiveness of the documented policy and legislation.
- The documentation search was limited to documentation available online and in English. While effort was made to access documents referred to in literature not available online through UNFPA country focal points, it was not possible to complete a more comprehensive search of hard-copy or other documents not publicly accessible in the available time.
- The study did not cover all implementation level documentation such as practice guidelines or sub-national documents that may have included more specific guidance on SRH and GBV.
- There are likely to be initiatives at a country level to address particular priorities and gaps in current national policy and legislation, including sub-national initiatives. As the scope of this review is on national level legislative, policy and strategic planning documentation, such initiatives may not be captured here.
- While the review did incorporate GBV legislation and policy in so far as it intersects with SRHR, it cannot be considered a comprehensive GBV legislative review in its own right. The review did not comprehensively cover for example access to justice, sentencing and policing.

2 Country profile

2.1. Background

Samoa was the first country in the Pacific to gain independence in 1962. It consists of four inhabited islands – Savaii, Upolu, Manono and Apolima. Upolu, the main island, is where the capital of Apia is located. It has a population of around 195,979 according to the 2016 census of which 51 percent are male and 49 percent are female (Samoa Bureau of Statistics [SBS], 2017). Samoa has a relatively young population with 50 percent of the total population below the age of 21 years old (SBS, 2019). There has been an 'urbanisation' drift in Samoa with 54 percent living in the Apia Urban Area (AUP) and North West Upolu (NWU). Population concentration in AUP and NWU puts a strain on services and infrastructure and equitable service provision across rural and urban areas remains a challenge, with rural areas particularly underserviced (Ministry of Finance [MoF], 2016).

There are 11 traditional districts and each district is divided into villages. The social structure in the villages is hierarchical; leadership and decision-making roles are held mostly by men who hold *matai* or chiefly titles. For every nine-male *matai* in Samoa, there is only one female *matai* (SBS, 2019). Their roles include local law making, mediation in local disputes and maintaining the welfare and safety of the villagers. The titled members make up the village council (*fono*) that is responsible for the wellbeing of the villagers (Amosa, 2012). The women's committee, the *aualuma* provides advice to the village council, and is primarily responsible for matters of health and education in the village. The untitled men, the *taulele'a*, are responsible for the provision of food and implementing the decisions of the village council (Ibid). The village pastors provide spiritual leadership with churches playing a central role in the life of Samoans.

The largest church denomination is the Congregational Christian Church of Samoa, followed by the Catholic Church, the Church of Latter-Day Saints and the Methodist Church. Christianity forms the basis of Samoa's Constitution and is considered in all Samoa's social-political and economic development policies (SBS, 2019).

Samoa ranks 111 out of 189 countries on the human development index (HDI), putting it in the high human development category. Samoa's HDI increased by 15% between 1990 and 2017 (UNDP, 2020). Based on classification by income, Samoa is ranked as a lower-middle income country (World Bank, 2018). The livelihoods of many Samoans include a reliance on fisheries, agriculture and small-scale trading. Remittances from the Samoan diaspora make a significant contribution to the economic base of Samoa due to the large number of Samoans living abroad: about 21.6 per cent of GDP in the 2014-2015 period (MoF, 2016, p. i). Samoa's economy is highly vulnerable to external shocks due to limited resources, frequency of disasters and its small population size.

Samoa ranks 81 out of 162 countries on the Gender Inequality Index (GII), based on three dimensions – reproductive health, empowerment and economic activity (UNDP, 2020). The data from the Samoan Bureau of Statistics shows that the percentage of women who complete secondary school and tertiary education is higher than men (SBS, 2019). The urban-rural gap for persons not attending school is widening, at more than 80 per cent in rural areas compared to only 18 per cent or less in urban areas (SBD, 2019). Despite the achievement of women in secondary school and tertiary education, women are more economically vulnerable than men. In the 2016 census there were 71 per cent males to 29 per cent females in the economically active population and 38 per cent males to 62 per cent females in the non-economically active population (SBS, 2019). The majority of people in the non-economically active population were engaged in domestic tasks

(SBS, 2019). Despite overall lower representation of women in the workforce, females outnumber males in teaching, nursing, financial and insurance roles (SBS, 2019). Political candidacy in Samoa is open to *matai* title holders only, with extremely low representation of women in decision-making roles at the village through to the national level.

2.2. Legal frameworks

2.2.1. The Constitution

Following independence from New Zealand, Samoa adopted the Westminster parliamentary model. The Constitution establishes Samoa's system of government, providing for three separate arms of the State, discussed further under 'the legal system'.

The Constitution of the Independent State of Samoa ('Constitution') (ss 5-15) establishes that all citizens are entitled to fundamental rights guaranteed in the constitution including the right to life, the right to personal liberty, freedom from inhumane treatment, freedom from forced labour, right to a fair trial, rights concerning criminal law, freedom of religion, rights concerning religious instruction, the right to freedom of speech, assembly, association, movement and residence, rights to property, and freedom from discriminatory legislation.

Specifically, (s 15 (1)) requires that 'all persons are equal before the law and entitled to equal protection under the law' and (s15 (3)(b)) states that 'Nothing in this Article shall prevent the making of any provision for the protection or advancement of women and children or of any socially or educationally retarded class or persons'. While there is some recognition of the intersecting ways in which discrimination is perpetuated, the *Constitution* does not specify discrimination on the grounds of disability, health status (including HIV), sexual orientation or gender identity.

Samoa's *Constitution* does not explicitly guarantee a right to health nor does it provide a guarantee of substantive equality between men and women. Notably, in 2013 Samoa passed the *Constitutional Amendment Act 2013* providing for a ten per cent quota to increase the representation of women in parliament.

2.2.2. The legal system

The *Constitution* establishes three separate branches of the state – the legislature (Parliament), the Executive (the administrative arm of Government) and the Judiciary (the legal branch of Government). The Executive is comprised of the Head of State and is responsible for the day to day management of the State including the enforcement of laws in Samoa. Parliament is the legislative branch of Government comprised of the Legislative Assembly. Laws are enacted when Bills are passed by the Legislative Assembly. The Judiciary is responsible for the interpretation of the law under the *Constitution* and encompasses Samoa's court system.

The court system comprises District Courts including the Family and Youth Court; and a Supreme Court staffed by local judges. The Court of Appeal sits once a year and is made up of overseas judges. There is a separate Land and Titles Court that deals with all claims and disputes concerning customary land ownership and matters relating to Samoan names and titles.

Samoa's *Constitution* has provisions for Samoan customs as well as democratic laws. Law being defined under the *Constitution* as:

> '..being in force in Samoa; and includes this *Constitution*, any Act of Parliament and any proclamation, regulation, order, by-law or other act of authority made thereunder, the English common law and equity for the time being in so far as they are not excluded by any other law in force in Samoa, and any custom or usage which has acquired the force of law in Samoa or any part thereof under the provisions of any Act or under a judgment of a Court of competent jurisdiction' (s 11(1)).

The relationship between customary, common and statutory law is not expressly stated, so it is unclear which takes precedence (Corrin, 2008b, p. 66). This poses potential challenges where custom may contradict statutory law. The *Village Fono Act 1990* (and amended in 2016) gives the village councils authority to define customary laws through the establishment of by-laws 'in accordance with the custom and usage'. A Village Fono is not a Court per se but does have the power to deal with affairs of the village, in accordance with the custom and usage of that village. The authority of the Village Fono is limited to persons ordinarily resident in the village and can be appealed to the Land and Titles court. The Village Fono plays a central role in the functioning of family and community life in Samoa and therefore are a vital partner in improving access to SRH and addressing GBV.

Monitoring bodies

Samoa's Constitutional Authorities include the Office of the Ombudsman (also Samoa's National Human Rights Institution). This body is tasked with enhancing the lawful delivery of State Agency mandates to the reasonable satisfaction of the public, promoting and protecting human rights and freedoms and providing oversight/ conducting investigations concerning the abuse of power by enforcement agencies. The work of the Office of the Ombudsman is governed by the *Ombudsman Act 2013. O*ffice of the Ombudsman/ National Human Rights Institution publishes an annual 'State of Human Rights Report' as required by the *Ombudsman Act 2013* which in 2018 involved the landmark 'National Public Inquiry into Family Violence' (OONHRI, 2017) and more recently in 2020 'Village Family Safety Committee Pilot Project' (OONHRI, 2019) both of which will be discussed later in this report.

The Samoa Law Reform Commission was established in 2008 under the *Law Reform Commission Act 2018* with the mandate (s 6):

1. to recommend to the Attorney General suggested programs for the reform of the laws of Samoa;

2. in accordance with references made to it by the Prime Minister, Cabinet or the Attorney General (whether at the Commission's suggestion or otherwise), to research and analyse areas of law considered to be in need of reform and report its recommendations for reform to the Prime Minister and the Attorney General;

3. to advise Government Ministries and agencies on the manner or content of reviews of the law conducted by those Ministries and agencies;

4. to consult with and advise the public (and any specific sectors of the community) about its work.

The Samoa Law Reform Commission plays a crucial role in ensuring Samoa's legal framework aligns with international human rights standards and commitments, outlined below. They have been actively engaged in key law reform in translating international obligations into domestic legislation. In 2016, the Samoa Law Reform Commission undertook a review of Samoa's compliance with the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), some of the findings of which are drawn upon in this review (SLRC, 2016).

2.2.3. International human rights conventions and commitments

The Sustainable Development Goals (SDGs) were set in 2015 by the United Nations General Assembly, with Samoa adopting the 2030 Development Agenda at this time. Targets that Samoa has committed to under the SDGs, specifically relevant to this review, are shown in Table 2: SDG Targets and Indicators below:

Table 2: SDG targets and indicators

SDG target	Aligned indicators
3.1 By 2030, reduce the global maternal mortality ratio to less than 70 per 100,000 live births	3.1.1 Maternal mortality ratio 3.1.2 Proportion of births attended by skilled health personnel
3.2 By 2030, end preventable deaths of newborns and children under 5 years of age, with all countries aiming to reduce neonatal mortality to at least as low as 12 per 1,000 live births and under-5 mortality to at least as low as 25 per 1,000 live births	3.2.2 Neonatal, infant, and under-5 mortality rates
3.3 By 2030, end the epidemics of AIDS, tuberculosis, malaria and neglected tropical diseases and combat hepatitis, water-borne diseases and other communicable diseases	3.3.1 Number of new HIV infections per 1,000 uninfected population, by sex, age and key populations
3.7 By 2030, ensure universal access to sexual and reproductive health care services, including for family planning, information and education, and the integration of reproductive health into national strategies and programmes	3.7.1 Proportion of women of reproductive age (15-49 years) who have their need for family planning satisfied with modern methods 3.7.2 Adolescent birth rate (10-14 years, 15-19 years) per 1,000 women in that age group
5.2 Eliminate all forms of violence against women and girls in the public and private spheres, including trafficking and sexual and other types of exploitation	5.2.1 Proportion of ever-partner women and girls aged 15 years and older subjected to physical, sexual or psychological violence by a current or former intimate partner in the previous 12 months, by form of violence and by age 5.2.2 Proportion of women and girls aged 15 years and older subjected to sexual violence by persons other than an intimate partner in the previous 12 months, by age and place of occurrence
5.3 Eliminate all harmful practices, such as child early and forced marriage and female genital mutilation	5.3.1 Proportion of women aged 20-24 years who were married or in a union before age 15 and before age 18 5.3.2 Proportion of girls and women aged 15-49 years who have undergone female genital mutilation/cutting, by age
5.6 Ensure universal access to sexual and reproductive health and reproductive rights as agreed in accordance with the Programme of Action of the International Conference on Population Development and the Beijing Platform for Action and the outcome documents of their review conferences	5.6.1 Proportion of women aged 15-49 years who make their own informed decisions regarding sexual relations, contraceptive use and reproductive health care 5.6.2 Number of countries with laws and regulations that guarantee full and equal access to women and men aged 15 yrs and older to sexual and reproductive health care information and education

This review will prepare Samoa to report against SDG indicator 5.6.2 in particular.

Samoa was the first Pacific Island country to ratify the CEDAW in 1992. However, it has not ratified the CEDAW Optional Protocol which sets up a mechanism for individuals to submit complaints to the Committee on the Elimination of All Forms of Discrimination against Women. It is also signatory to a number of other international conventions, listed in Table 3: International human rights conventions.

The right to health generally is an economic, social and cultural right, contained within the International Covenant on Economic, Social and Cultural Rights (ICESCR, art 12) of which Samoa is notably not a signatory. More specific to SRH, CEDAW contains articles concerned with reproductive health, obliging state parties to ensure 'access to health care services, including those related to family planning' and access to 'appropriate services in connection with pregnancy, confinement and the postnatal period, granting free services where necessary, as well as adequate nutrition during pregnancy and lactation' (art 12). and 'access to adequate health care facilities, including information, counselling and services in family planning' (art 14).

Further, CEDAW establishes the obligation for signatories to 'take all appropriate measures to eliminate discrimination against women in order to ensure to them equal rights with men in the field of education' - including supporting access to education for girls and women who have left school prematurely and to ensure access to information and advice on family planning in relation to education (art 10) - and ensure elimination of discrimination against women 'in all matters relating to marriage and family relations' (art 16).

In 2017, the CEDAW Committee established General Recommendation 35 (UN Committee on CEDAW, 2017), aimed at 'accelerating the elimination of gender-based violence against women' (p.3), which subjects states to the broad obligation to take positive measures to prevent and respond to GBV under customary international law, which includes an obligation to hold perpetrators accountable. The Government of Samoa and, in particular, the Ministry of Women, Community and Social Development have shown a commitment to working towards compliance with the convention through progressing some of the key recommendations out of the 2018 CEDAW 'Concluding observations on the sixth periodic report Samoa' including new policy measures that will be explored in this review.

The Convention on the Rights of Persons with Disabilities (CRPD) ratified by Samoa in 2016, outlines the right for persons with disabilities to access the same health care as other persons, including sexual and reproductive health (art 25). Samoa has ratified the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT) which recognises some abuses of SRHR as being so severe that they amount to torture, such as female genital mutilation and forced sterilisation (including of people with disabilities). The CAT obliges States to protect their citizens against these forms of harmful practices.

Samoa has also ratified the Convention on the Rights of the Child (CRC) in 1994, which protects a child's right to live free from violence. Under art 19 of the Convention, parties 'shall take all appropriate legislative, administrative, social and educational measures to protect the child from all forms of physical or mental violence, injury or abuse, neglect or negligent treatment, maltreatment or exploitation, including sexual abuse, while in the care of parent(s), legal guardian(s) or any other person who has the care of the child.' Under art 24(1) of the CRC, state parties 'recognize the right of the child to the enjoyment of the highest attainable standard of health... [and] strive to ensure that no child is deprived of his or her right of access to such health care services.' The article further provides that parties should take measures to 'diminish infant and child mortality' (art 24(2)(a)); ensure 'appropriate pre-natal and post-natal health care for mothers' (art 24(2)(d)); and 'develop preventive health care, guidance for parents and family planning education and services' (art 24(2)(f)).

The UN Committee on the CRC has made clear in General Comment 15 (2013) that the CRC requires the realisation of universal rights to SRH services, including young people:

> States should ensure that adolescents are not deprived of any sexual and reproductive health information or services due to providers' conscientious objections'[69], including safe abortion and post-abortion care services, irrespective of whether abortion itself is legal [70].

Like other legal systems inherited from Britain, Samoa is a dualist state. As such, in order for international legal conventions to be binding, they need to be expressly incorporated into domestic law by parliament once instruments are signed or ratified. However, some judiciary have shown a willingness to reference or rely upon international obligations that have not been fully incorporated into domestic law, for example the application of the CRC in Police v Kum [2000] WSCA 6.

The following table summarises the key international conventions, relevant to this review, to which Samoa is party.

Table 3: International human rights conventions

Instrument	Ratified
Convention on the Elimination of All Forms of Discrimination against Women (1981) See in particular art 12 (Elimination of discrimination in access to health care services including family planning), art 13 (2.b Access to health care facilities including family planning for rural women), art 16 (Elimination of discrimination in marriage, including in relation to family planning and elimination of child marriage); and CEDAW Committee General Recommendation No.35 on gender-based violence against women	1992
Convention on the Rights of the Child (1990) See in particular art 13 (Right to seek, receive and impart information), art 19 (Right to be protected from all forms of violence and abuse), art 24 (Right to health and health care), art 34 (Right to be protected from sexual exploitation and abuse). General Comment No 15 on the right of the child to highest attainable standard of health	1994
Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict (2002)	2016
Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography (2002)	2016
Optional Protocol to the Convention on the Rights of the Child on a communications procedure (2014)	2016
Convention of the Rights of Persons with Disability (2006) See in particular art 16 (Freedom from exploitation, violence and abuse), art 21 (Right to information), art 23 (Right to marriage, parenthood, family planning and retention of fertility), art 25 (Right to health and health care, including specific SRH)	2016
Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (1987)	2019
International Convention for the Protection of all Persons from Enforced Disappearance (2010)	2012

(Source: OHCHR (2020) 'Status of Ratification')

2.2.4. Regional agreements and frameworks

In addition to its obligations under international human rights conventions, Samoa has committed to various regional agreements which concern the development of sexual and reproductive health in the Pacific, such as the Pacific Youth Development Framework 2014–2023 (Pacific Community, 2015) and the Pacific Sexual Health and Well-Being Shared Agenda 2015–2019 (Pacific Community, 2014). The Shared Agenda shifts focus from a medical model to a comprehensive rights-based approach to achieving sexual and reproductive health and rights for all people in the Pacific. Samoa has also endorsed the Moana declaration (2013) that recognizes the crucial role parliamentarians play in advocating for the implementation of the ICPD Programme of Action. Through the Moana Samoa committed to the promotion of Sexual in the Pacific, specifically ensuring sexual and reproductive health is integrated into national development strategies, health plans and national budgets. Through 2015 KAILA! Pacific Voice for Action on Agenda 2030: Strengthening Climate Change Resilience through women's, children's and adolescent health (2015) Samoa commits to advancing sexual and reproductive health and rights as an integral part of national climate change resilience and affirms the centrality of advancing gender equality for sustainable development. Samoa is also a party to regional agreements relevant to the prevention of GBV, including the Revised Pacific Platform for Action on the Advancement of Women and Gender Equality (2005-2015) (Pacific Community, 2005), and the Pacific Leaders Gender Equality Declaration (PLGED) 2012 (Pacific Islands Forum Secretariat, 2012).

2.3. Health system governance

The Ministry of Health is the principal healthcare funder and provider in Samoa and oversees the development, implementation and monitoring of key health (including SRH) policies and guidelines. The health service delivery system in Samoa is largely publicly owned and up until recently heavily centralised through the hospitals. The main Hospital Tupua Tamasese Meaole in Samoa is located in Apia, Upolu. The other referral hospital is located on Savaii Island, Malietoa Tunumafili (MoH, 2018f). There are 11 rural health facilities comprising 6 rural district hospitals (3 on Upolu and 3 on Savaii) and 5 community health centres (MoH, 2018f). Coverage of health services in rural areas remains an issue with people reportedly bypassing primary health care (PHC) and overcrowding in the hospitals, particularly the national referral hospital in Apia (MoH, 2020a).

Up until recently, Samoa's health service delivery sat separately from the Ministry of Health through the National Health Service. In 2017, Cabinet of Samoa took the decision to merge the National Health Service and the Ministry of Health to improve coordination of the health sector with a view to strengthening primary health care (PHC), particularly in rural areas (WHO, 2017). The institutional separation of the Ministry of Health from the National Health Service was seen to have exacerbated health service resource constraints by separating medical services and staffing from broader public health planning and coordination.

The new Samoa Health Sector Plan (HSP) 2019-2029 developed by the Ministry of Health prioritises strengthening Samoa's Public Health System and has a central focus of utilising a fa'a-Samoa initiative (which translates to 'Samoan way') of delivering PCH to its communities. This has predominantly centred on the Package of Essential Non-Communicable Diseases, known as PEN Fa'a Samoa Initiative. This village-based approach empowers and trains Village Women's Committees utilising a family orientated community engagement strategy for prevention, early detection and diagnosis through referral at a community level to rural health facilities and if necessary tertiary health facilities (MoH, 2020a).

The merger between the Ministry of Health and the National Health Service as well as engagement of the Ministry of Health with village committees underpins its new approach to strengthening universal health coverage, now legislated in the new *Ministry of Health Amendment Act 2019.*

Health financing remains an issue with sustainability of health expenditure also a focus of the new HSP (MoH, 2020a). The plan does outline an indicative health financing framework with funding sources from the Government of Samoa budget along with development partners like World Bank, WHO, UNFPA, Australia DFAT, New Zealand MFAT and Global Fund to Fight AIDS, Tuberculosis and Malaria (GFATM) and the private sector. There is a dedicated budget for achieving Key Outcome 4 (Improved SRH) and Key Outcome 5 (Improved Maternal and Child Health), however these only make up 10.43% and 0.05% of total health funding respectively (MoH, 2020a).

The HSP states that 'It should be noted that several important costs for achieving Key Outcome 4 including, for example, the salaries for health workers who will be providing these services, are currently classified under other programs including Key Outcome 1. As a result, the actual resources allocated to Outcome 4 will be significantly greater than what is captured under the current budget allocation classification' (MoH, 2020a, p. 29). Interestingly, a recent UNFPA study found that a total investment of $12.3 million ($11.9-$12.7 million), with an additional investment of $2.1 million ($1.7-$2.5 million) between 2020 and 2030, or 21 per cent more than business as usual, could enable Samoa to achieve 95 per cent coverage of maternal health interventions and 0 per cent unmet need for family planning by 2030 (UNFPA, 2021).

The role of the UN, NGOs and civil society in progressing a SRH agenda in Samoa has been significant. NGOs like the Samoa Fa'afafine Association (SFA), Samoa Family Health Association (SFHA) and Samoa Red Cross Society (SRCS) continue to be key partners to the Ministry of Health in delivery essential SRH services, particularly in rural areas (MoH, 2017, p. 22). Interagency partnerships are also considered vital in addressing GBV. The National Inquiry into Family Violence in Samoa identified that health workers are ill equipped to deal with GBV in relation to screening, risk assessment and referrals, with a lack of training and resources available (OONHRI, 2018). Counselling was found to be the most common service offered to survivors of gender-based violence. Most of this work is done by NGOs and civil society as the hospital system is overburdened and understaffed. The Samoa Victim Support Group (SVSG) plays a key role in supporting victims and their children- they receive referrals from the police and the courts and work closely with key Government Ministries.

The Ministry of Women, Community and Social Development is the mandated government entity to develop a national strategy, policies, and mechanisms to prevent and respond to all forms of GBV in communities, including coordination of the Ending Violence Against Women (EVAW) Taskforce. In the last 12 months the Ministry of Women, Community and Social Development has accelerated efforts to fill some key national policy gaps in relation to GBV. To date there has been no overarching national strategy or action plan on eliminating all forms of GBV, however it is incorporated into several other policies and guidelines, explored further in this report. Despite this and other progress made, institutional capacity to adequately plan, coordinate and monitor the implementation of key GBV policy commitments has been a challenge (CEDAW Committee, 2018). The Ministry operates with limited resources (approximately 3% of the National Budget). With the absence of an overarching national GBV plan or strategy, there has been no dedicated national GBV budget to date. There is an opportunity with the newly launched Ministry of Women, Community and Social Development policies explored in this report to ensure that this important work is adequately resourced and prioritised by the Government of Samoa in the next phase of its 'Strategy for the Development of Samoa'.

3 Summary of key findings

The following table summarises Samoa's legislation and policies according to key SRHR and intersecting GBV domains. Legislation and policy is mapped against the domains according to corresponding indicators, as outlined in the methodology. The indicators are intended to identify the extent to which Samoa's current national legislation and policies align with relevant international frameworks and commitments around universal access to SRHR and eliminating GBV. It should be noted that the GBV indicators included in this review are only those which intersect most closely with SRHR.

Table 4: Summary of the sexual and reproductive health and gender-based violence desk review

Domain	Sub-domain	Specific indicators	Status	Notes
Gender equality and non-discrimination		Constitutional guarantee of substantive equality between men and women	Partial	Under Samoa's *Constitution* s 15(1) states that 'all persons are equal before the law and entitled to equal protection under the law' and s 15(3)(b) states that 'Nothing in this Article shall prevent the making of any provision for the protection or advancement of women and children or of any socially or educationally retarded class or persons'. There is no comprehensive definition of gender equality.
		Does the Constitution contain an anti-discrimination clause on the grounds of sex, gender, marital status, sexual orientation or disability?	Partial	The *Constitution* s 15(2) states that 'Except as expressly authorised under the provisions of this Constitution, no law and no executive or administrative action of the State shall, either expressly or in its practical application, subject any person or persons to any disability or restriction or confer on any person or persons any privilege or advantage on grounds only of descent, sex, language, religion, political or other opinion, social origin, place of birth, family status, or any of them'. This does not include gender, sexual orientation, disability or HIV status. The *Labour and Employment Relations Act 2013* s 20 explicitly prohibits direct and indirect discrimination against an employee or applicant for employment in any employment policies, procedure or practice on the basis of one or more arbitrary grounds including ethnicity, race, colour, sex, gender, religion, political opinion, national extraction, sexual orientation, social origin, marital status, pregnancy, family responsibilities, real or perceived HIV status or disability. *Mental Health Act 2007* s3. […] objectives and principles: (i) to eliminate discrimination against, and abuse, mistreatment and neglect of persons with a mental disorder

Domain	Sub-domain	Specific indicators	Status	Notes
SRH general	National SRH strategy	National sexual and reproductive health policy (or strategy)[2]	Yes	National Sexual and Reproductive Health Policy 2018-2023 (Ministry of Health). Includes maternal health or safe motherhood (including family planning, antenatal care and essential obstetric care), fertility regulation (including contraception), prevention and control of sexually transmitted infections (including HIV) and gender-based violence (MoH, 2018f). It should be noted that while the Policy does present a comprehensive package of essential services, it does not include provision of safe abortion as a key output due to the legal status of abortion (discussed further against a seperate indicator). Though not included as an output, post abortion care is included as an indicator. While the SRH policy does have a number of targets around increasing availability, accessibility and demand for contraceptives, it does not include anything specific to emergency contraception.
		Does it include allocation of resources (including budget) to achieve targets and indicators to measure implementation?	Partial	Along with the National Sexual and Reproductive Health Policy 2018-2023 (Ministry of Health) there is a corresponding Strategic Plan of Action 2018-2023 outlining key outputs, indicators, targets, data sources, costing and source of funds. It should be noted that the budget allocation is low to achieve many of the identified targets which will be discussed in greater detail in the main report.
	Fertility	Population policy on fertility (raise, lower, maintain)	No	The Samoa Population Action Plan 2016-2021 launched in 2017, a four-year plan developed in response to aligning Samoa's demographic changes with the availability of resources, made mention of population fertility rates however there is no current policy or strategy integrating population fertility as a focus.
		Population policy on adolescent birth rate	Yes	A number of current policies include specific targets around population fertility rates for adolescents. The Samoa Population Action Plan 2016-2021 includes decreased adolescent birth rate and increased awareness of benefits of family planning as identified outcomes in its implementation framework. Further, the National Sexual and Reproductive Health Policy 2018-2023 and the Health Sector Plan both aim to reduce the adolescent birth rate to 10%.

2 "Recognizing that countries are in different positions in terms of resources, capacity, and the policy and legal environment, the most realistic option is for countries to commit in principle to a comprehensive approach to SRHR by adopting the definition proposed by the Guttmacher– Lancet Commission" (UNFPA, 2019b, p32). The Guttmacher-Lancet commission provides an outline of a comprehensive SRH essential services package in line with the ICPD Program of Action and other key international frameworks (Starrs, et al., 2018). Refer to Annex 2. Official adoption of a defined package of SRHR health services is a clear commitment that helps to ensure accountability.

Domain	Sub-domain	Specific indicators	Status	Notes
SRH general	Adolescents and youth SRHR	Legislated equal minimum age of 18 for marriage	No	*Marriage Ordinance Act 1961* s 9 defines the minimum age of marriage as 18 for males and 16 for females. s 10 provides that parental or a guardian's consent is required for females under 19 and males under 21.
		Law requires full and free consent of both parties to a marriage	No	While the *Marriage Ordinance Act 1961* s 11 outlines general provisions relating to consent, this is only in regard to consent to marriage of minors by a parent or guardian. There is no provision in current legislation explicitly requiring the full and free consent of both parties to the marriage. Forced marriage is not criminalized in Samoa
		Legislated minimum age of consent to sexual activity	Partial	*Crimes Act 2013* Minimum age of consent to sexual activity is 16 (heterosexual). 'Sodomy' is criminalized therefore this indicator is only partially met. Note: There is no close in age provision (e.g. no legal protections for consensual sexual activity between for example a 15 and 16-year-old). Note the provision in the *Crimes Act 2013* s 59. Sexual conduct with young person under 16 (4) No person can be convicted of a charge under this section [s59] if the person was married to the young person concerned at the time of the sexual connection or indecent act concerned. This contradicts both the legislated minimum age of marriage and the minimum age to consent to sexual activity.
		Legislated compulsory primary and secondary education for boys and girls	Yes	Under the *Education Amendment Act 2019*, education in Samoa is compulsory for boys and girls aged between 4-16 years old.
		Legislated prohibition on expulsion from school due to pregnancy	No	No explicit protection from expulsion in current legislation. *The National Safe Schools Policy (2017)* contains provisions to protect pregnant girls from school dropout however does not fully address issues around gender inequality and promoting safe and healthy relationships.

Domain	Sub-domain	Specific indicators	Status	Notes
Sexual health	STIs, HIV and AIDS	Law(s) or regulation(s) that guarantee access to:		
		Voluntary counselling and testing	No	There are no legislative provisions guaranteeing access to voluntary counselling, testing, treatment and care in Samoa. *The Health Ordinance 1959* s 29 under 'infectious diseases' provides that the chief health officer may, if authorised by the Minister (e) require persons to report themselves or submit themselves for medical examination at specified times and places. This may undermine voluntary testing, however application of this in case law was beyond the scope of this review. National HIV, AIDS & STI Policy 2017-2022 guides the national response to HIV and STIs along with a series of clinical management guidelines. The policy specifies that testing must be voluntary and with informed consent.
		Treatment and care	No	
		Confidentiality	Yes	*Ministry of Health Act 2006* ss 1-5 (as amended in 2019) mandates confidentiality of any information of a person stored by the Ministry for the purpose of providing healthcare services or health service administration of the Ministry and must not be released for any purpose. It further stipulates that any person who releases such information in contravention of the above commits an offence. It should be noted that despite the introduction of this legislation in Samoa, anecdotally concerns about a lack of confidentiality in practice remains a barrier for accessing voluntary counselling, testing and treatment along with other SRH services according to feedback obtained in the December validation workshop.

Domain	Sub-domain	Specific indicators	Status	Notes
Sexual health	STIs, HIV and AIDS	No legislative restrictions to the above based on:		
		(a) age	Partial	While no explicit legislative restrictions to access voluntary counselling & testing, treatment and confidentially based on age could be found in this review, the National HIV, AIDS & STI Policy 2017-2022 states that: all children [under the age of 18] will require consent of the parent except in the case of mandatory neonatal testing. Children of any age under 18 will require the consent of a parent to receive any testing (HIV, STI, TB or otherwise). Part of pre-test counselling in these cases should involve convincing both the parent and the child of the value of getting tested. In special cases children living independently, who are not in contact with parents and who do not have a guardian, will be able to consent for HIV testing after they have been provided with age-sensitive information and counselling (p49) The policy goes on to stipulate: In sensitive cases where a child is under 18, parental consent is required, and the child could face social stigma from parents or community for accessing testing, prophylaxis, counselling or treatment, HIV and STI testing services should be offered as part of a broad panel of services addressing the general health of the child. The aim is to make the sexual health component of the health services discreet (p49).
		(b) sex	Yes	No explicit legislative restrictions to access voluntary counselling and testing, treatment and care and confidentially based on sex or marital status.
		(c) marital status	Yes	
		(d) third party authorization (e.g. spousal, parental/ guardian, medical)	Partial	As above in relation to the requirement for parental consent for testing of children under 18 (this is a policy statement and does not reflect legislative requirements, discussed further in the main report).
		Legal prohibition of discrimination based on HIV status	Partial	There is no constitutional protection against discrimination on the grounds of HIV status. However, *The Labour and Employment Relations Act 2013 s 20* explicitly prohibits direct and indirect discrimination against an employee or applicant for employment in any employment policies, procedure or practice on the basis of one or more arbitrary grounds including real or perceived HIV status.

Domain	Sub-domain	Specific indicators	Status	Notes
Sexual health	HPV	Law(s) or regulation(s) mandating access to HPV vaccine for adolescent girls?	**Partial**	The *Infants Amendment Act 2019* s 12A broadly mandates that (1) a parent or a person having the custody of a child must comply with the vaccination and immunisation requirements of the Ministry of Health in respect of the child, including but not limited to vaccination and immunisation requirements for infectious diseases such as measles, mumps and rubella. The HPV vaccine in reportedly included on the National Immunisation Schedule with the draft Expanded Program on Immunisation (EPI) Policy, however the authors were unable to locate a copy of the policy at the time of writing Gardasil is not included on the Samoa *Essential Medicines List 2019*
Contraception and family planning	Contraception	Does any law(s) or regulation(s) guarantee access to contraceptive services?	**Partial**	There is no provision in the Constitution or other legislation that specifically guarantees the right to healthcare or more specifically access to contraception. *Ministry of Health Act 2006 Schedule 2 s* 1.5 Stipulates that the Ministry of Health is required to provide c) Health Preventive Services, including (vii) Reproductive Health
		Essential medicines include:		*Samoa Essential Medicines List 2019*
		Female condoms?	**Yes**	*18.2.5 barrier methods* – Male and female condoms
		Contraceptive implants?	**Yes**	*18.2.3 hormonal contraceptive implants* – Levonorgestrel *18.2.4 intrauterine device* - copper containing device
		Emergency contraception (levonorgestrel)?	**Yes**	*18.2.1 oral hormonal contraceptives* – levonorgestrel Tabs 750microgm or 1.5mg
		Law(s) or regulation(s) that guarantee the provision of full, free and informed consent for contraceptive services (including sterilisation)?	**No**	No standalone law or regulation mandating full, free and informed consent specifically to contraceptive services.

Domain	Sub-domain	Specific indicators	Status	Notes
Contraception and family planning	Contraception	Does any law(s) or regulation(s) guarantee access to emergency contraception?	No	As above, the is no provision in the Constitution or other legislation that specifically guarantees the right to healthcare or more specifically access to contraception. *Ministry of Health Act 2006 Schedule 2 s* 1.5 Stipulates that the Ministry of Health is required to provide c) Health Preventive Services, including (vii) Reproductive Health. Emergency contraception is included on the 2019 Essential Medicines List
		No legislative restrictions on the above based on:		There are no legislative restrictions to access to contraception on the basis of age, marital status or disability. There are no legislative requirements for third party authorisation. The new National Policy on Gender Equality and Rights of Women and Girls 2021-2031 sets a target to 'Ensure that modern contraceptives are accessible, affordable and available without a requirement for third-party consent' (p13). However, national policy and legislation do not make reference to protections or requirements in relation to consent for minors or women with disabilities, leaving room for uncertainty in practice (discussed further in report). It is unclear whether there are any clinical or facility level guidelines that contradict the above policy statement as it was beyond the scope of this review to source these documents. There is anecdotal evidence that 3rd party authorisation for contraceptives is being implemented in practice, to be discussed further in the report.
		(a) age	Yes	
		(b) marital status	Yes	
		(c) 3rd party authorization (e.g. spousal, parental/ guardian, medical)	Yes	
	Family planning	Policy on provision of family planning services	Yes	National Sexual and Reproductive Health Policy 2018-2023 covers provision of family planning services
		Through government sources?	Yes	*Ministry of Health Act 2006 Schedule 2* s 1.5 Stipulates that the Ministry of Health is required to provide c) Health Preventive Services, including (vii) Reproductive Health.
		Financial support for provision through non-government?	Partial	It is unclear in current policy commitments whether family planning through non-government services are subsidized by the government. The National Sexual and Reproductive Health Policy 2018-2023 acknowledges private sector such as private general practitioners, NGOs and civil society, as well as religious institutions providing SRH and family planning services, in particular SFHA. It does not however specify financial support or subsidized services through the non-government sector.

Domain	Sub-domain	Specific indicators	Status	Notes
Comprehensive sexuality education and information	CSE law	Legislated mandatory integration of Comprehensive sexuality education into national school curriculum	No	There is currently no legislative mandate for integration of CSE into the national curriculum.
	CSE curriculum	Minimum requirements for the curriculum to cover:		There is currently no detailed outline of minimum required CSE content in the national curriculum. It should be noted however that the newly launched National Policy on Gender Equality and Rights of Women and Girls 2021-2031 includes a target to: Ensure the inclusion in school curricula of mandatory, universal, age-appropriate, comprehensive sexuality and reproductive health and rights education addressing the issues of power and responsible sexual behaviour, with special attention given to the prevention of early pregnancy, and strengthen continuing efforts towards awareness-raising in order to change cultural resistance to sexual and reproductive health education (p14)
		Relationships?	No	
		Understanding gender?	No	
		Violence and safety?	No	
		Sexuality and sexual behaviour?	No	
		Sexual reproductive health?	No	
		Human body and development?	No	
Maternal health	Maternity care	Does any law(s) or regulations (s) guarantee access to maternity care? Specifically:		The are no specific Constitutional or legislative provisions enshrining the right to health or health care generally or in relation to maternal and newborn care specifically. The *Ministry of Health Act 2006 Schedule 2 s 1.5* Stipulates that it is the responsibility of the Ministry of Health to provide c) Health Preventive Services, including (i) Health Education; (vii) Reproductive Health; (d) Health Services Performance, including (i) Medical Services; (iii) Pharmacy Services; (v) Nursing Services; (vi) Midwife Services; and (Vii) Traditional Healing and Birth Attendant Services It should be noted that access to a comprehensive package of maternity care including PNC and ANC, skilled birth attendants, EmOC is a key focus of the National Sexual and Reproductive Health Policy 2018-2023
		Comprehensive prenatal care	No	
		Delivery by skilled birth attendants	No	
		Emergency obstetric care	No	
		Post-natal and newborn care	No	

Domain	Sub-domain	Specific indicators	Status	Notes
Maternal health	Maternity care	No legislative restrictions based on:		No specific legislative prohibitions on maternity care.
		(a) age	Yes	
		(b) marital status	Yes	
		(c) 3rd party authorization (e.g. spousal, parental/ guardian, medical)	Yes	
	Abortion	Legal ground on which abortion is permitted?		The *Crimes Act 2013* ss 111-115 establishes abortion in Samoa as a criminal offense unless s 116 done in the case of pregnancy not more than 20 weeks gestation and the person doing the act: • Is a registered medical practitioner; and • Believes that continuance of the pregnancy would result in serious danger (not being danger normally attendant upon childbirth) to the life, or to the physical or mental health, of the woman or girl.
		To save a woman's life	Yes	
		To preserve a women's physical health	Yes	
		To preserve a woman's mental health	Yes	
		In case of rape	No	See above, unless case can be made for threat to life, physical or mental health
		In cases of fetal impairment	No	See above, unless case can be made for threat to life, physical or mental health
		If abortion is legal on some or all grounds, no restrictions based on:		The *Crimes Act* allows abortion in cases that pose serious danger to a woman's life, physical or mental health. Other than requiring a medical opinion in relation to ascertaining the level of risk, there are no apparent restrictions based on these grounds. Clarification and guidance are required to support implementation and reduce barriers to accessing safe abortion to protect both women and girls as well as medical practitioners. At the time of this review, it is unclear whether there are clinical guidelines available for the management of safe abortion and post abortion care.
		Medical professional authorization	Partial	
		Parental or judicial consent for minors	Partial	
		Husband's consent for married women	Partial	

Domain	Sub-domain	Specific indicators	Status	Notes
Maternal health	Abortion	Women cannot be criminally charged for illegal abortion	No	The *Crimes Act 2013 s113* – A women or a girl is liable to imprisonment for a term not exceeding seven years for procuring or intending to procure a miscarriage.
		Guaranteed access to post abortion care is mandated in policy or legislation, irrespective of legal status of abortion	No	There is no legislative provision guaranteeing access to post abortion care in Samoa. The National Sexual and Reproductive Health Policy 2018-2023 does not outline provision for post abortion care, although does include an indicator 'Proportion of health facilitates that provide postpartum, post abortion and/ or HIV services'. At the time of this review, it is unclear whether there are clinical guidelines available for the management of safe abortion and post abortion care.
	Lifesaving commodities	National list of Essential medicines includes[3]:		Samoa *Essential Medicines List 2019*
		Oxytocin	Yes	22.1 Medicines used in obstetrics – oxytocin Injection 10IU/ml amp
		Misoprostol	Yes	22.1 Medicines used in obstetrics – misoprostol Tablet 200microgm
		Magnesium sulphate	Yes	22.1 Medicines used in obstetrics - magnesium sulphate Inj 50%
		Injectable antibiotics	Yes	6.2 Anti-bacterials - benzylpenicillin
		Antenatal corticosteroids	Yes	8.1 Immunosuppressive medicines - Dexamethasone
		Chlorhexidine	Yes	15. Disinfectants and antiseptics
		Resuscitation devices for newborns	No	Not included on Essential Medicines List
		Amoxicillin	Yes	6.2 Anti-bacterials
		Oral rehydration salts	Yes	17.7.3 Oral rehydration
		Zinc	Yes	17.7.1 Medicines for diarrhoea in children

3 UN Comission on Life-saving commodities for women and children

Domain	Sub-domain	Specific indicators	Status	Notes
Maternal health	Family/ work balance	Legislated maternity leave	Partial	Under the *Labour and Employment Relations Act 2013 ss 43-44* female employees are entitled to four weeks of maternity leave with full pay and two weeks of unpaid leave or 6 weeks on 2/3 of an employee's normal pay. There is also an entitlement for men of a minimum of five days of paternity leave (s 46). Note that the Public Service Commission's Working Conditions and Entitlements Policy 2015 provides that female employees working in the public sector will be granted maternity leave of 12 weeks at full pay. The *Labour and Employment Relations Act 2013* should be brought into line with the Public service commission to ensure women working in the private sector are afforded the same conditions.
		Legislated paternity leave	Partial	
		Does legislation guarantee provision of childcare by the employer or state?	No	

Domain	Sub-domain	Specific indicators	Status	Notes
Gender-based violence	National action plan or strategy on violence against women	National Action Plan or Strategy on gender-based violence?[4]	**Yes**	The Ministry of Women Community and Social Development has recently launched the National Policy on Family Safety: Elimination of Family Violence 2021 – 2031. The policy will be 'operationalised through a rolling ten-year Action Plan that will be reviewed annually and updated where appropriate' (p14). It is unclear whether the stated 'Action Plan' and the 'Implementation Plan' embedded in the policy are one and the same. This is the first standalone national policy addressing the most prevalent form of gender-based violence in Samoa, family violence. While it does provide scope to address other forms of GBV (particularly through a strong focus on prevention), it does not comprehensively include *all forms* of GBV. Strategy 3 'Response System' centres around implementation of the Samoa Interagency Services Guide (IESG) to Gender-based Violence and Child Protection (2021) which broadly aligns with the Essential Services Package for women and girl's subject to violence and has a broader scope beyond family violence. The IESG provides only a high-level summary of the roles and responsibilities of key GBV service providers and does not require a commitment from them to provide minimum services or adhere to guidelines. Gender-based violence is included in other national policies including: National Policy on Gender Equality and Rights of Women and Girls 2021-2031. Note that this outlines a specific goal under 5.1.1 Strengthening policies, laws and plans: 'Develop a comprehensive strategy to end gender-based violence, which encompasses measures in all fields, including at the executive, judicial and legislative levels and the regular collection, analysis and publication of data from the justice, social and health sectors, as well as effective cooperation among institutions involved in prevention, protection and remedies' (p18). National Sexual and Reproductive Health Policy 2018-2023 acknowledges GBV as a fundamental component of SRH. Despite this, there are no specific GBV targets included in its strategic plan of action.

4 In line with Essential Services Package for women girls subject to violence https://www.unwomen.org/en/digital-library/publications/2015/12/essential-services-package-for-women-and-girls-subject-to-violence

Domain	Sub-domain	Specific indicators	Status	Notes
Gender-based violence	National action plan or strategy on violence against women	Does it include allocation of resources (including budget) to achieve targets?	No	The National Policy on Family Safety: Elimination of Family Violence 2021 – 2031 notes the need for resources and briefly outlines an annual workplan and budget process, however, there are no specific budget details for implementing the policy provided. Along with the goal to develop a comprehensive strategy to end gender-based violence in the National Policy on Gender Equality and Rights of Women and Girls 2021-2031, it states 'Government and partners to ensure adequate resourcing and support for the Ending Violence Strategy' (p18).
		Does it include benchmarks, indicators to measure implementation of legislation?	Partial	There is an Implementation Plan included in the National Policy on Family Safety: Elimination of Family Violence 2021 – 2031 with outcomes and high-level indicators against the key priority areas. The policy does state that a more comprehensive multi-sector M&E framework will be developed. The National Policy on Gender Equality and Rights of Women and Girls 2021-2031 includes goals in relation to GBV legislative review as well as developing mechanism for data collection to monitor policy implementation.
		Does it establish multisectoral referral mechanisms?	Partial	The National Policy on Family Safety: Elimination of Family Violence 2021 – 2031 outlines governance of the policy including that the Ministry of Women, Community and Social Development will be responsible for 'building partnerships and networking (the coordinating role of a National Ending Violence Taskforce in coordinating the start of the interagency referral system at the national level will be crucial at the starting point)' (p13). The policy references the Samoa Interagency Services Guide (IESG) to Gender-based Violence and Child Protection (2021) which broadly provides guidance on referral pathways, confidentiality and informed consent. It outlines broad referral pathways and provides standardised GBV and child protection referral forms. The IESG falls short of a commitment/ agreement from key agencies to adhere to the referral guidelines.
		Does it establish mechanisms for collection of GBV data, including administrative and case management data?	Partial	The National Policy on Family Safety: Elimination of Family Violence 2021 – 2031, the Samoa Interagency Services Guide (IESG) to Gender-based Violence and Child Protection (2021) and the National Policy on Gender Equality and Rights of Women and Girls 2021-2031 all set outcomes related to strengthening GBV data collection, including administrative and case management data, through improving existing information management systems, developing evaluation systems, and developing guidelines to address gaps in information and data, but do not articulate who has responsibility (multi-sector) or is accountable for the data collection, performance indicators or target, nor a comprehensive mechanism or tools for the standardisation of data collection at the national level.

Domain	Sub-domain	Specific indicators	Status	Notes
Gender-based violence	National action plan or strategy on violence against women criminalisation & civil legislation	Are there measures in place to address domestic violence through civil and criminal law offenses?	**Yes**	While there are no standalone domestic violence offences in the *Crimes Act 2013,* a breach of a Protection order constitutes an offence under the *Family Safety Act 2013.* Under the *Crimes Act 2013 and Amendment Act 2017,* violence that takes place in domestic relationships can also be considered criminal where it falls under the ambit of other crimes. A non-exhaustive list of existing criminal offences that may be relevant in domestic violence incidents are outlined in the main report. When an offence takes place within the context of a domestic relationship, under the Family Safety Act 2013 the Court is directed to 'consider that fact as an aggravating factor against the offender when considering sentencing, but also allows for mitigating factors to be considered in sentencing.
		Criminalisation of sexual violence	**Partial**	The definition of rape in the *Crimes Act 2013* (ss 48, 49, 52) is a narrow one involving 'non-consensual penetration of the female's genitalia by the male penis' and carries a maximum penalty of life imprisonment. Rape is separated from non-consensual 'sexual connection', which has a much broader definition of penetration of the genitalia or anus by *(a) (i)* any part of the body of any other person, (ii) any object held or manipulated by any other person; or (b) connection between the mouth or tongue or any part of the body of any person and any part of the genitalia or anus of any other person. Unlawful sexual connection carries a maximum penalty of 14 years imprisonment'. The law contains a specific criminal provision regarding child pornography *Crimes Act 2013(s 82)*. The law specifies a seven-year prison sentence for a person found guilty of publishing, distributing, or exhibiting indecent material featuring a child. Sexual harassment is outlined in the *Labour and Employment Relations Act 2013* however not explicitly criminalised. Trafficking in people including sexual exploitation is criminalised under the *Crimes Act 2013 ss 155-157*
		Comprehensive definition of domestic violence in legislation, including physical, sexual, psychological and economic violence	**Partial**	*Family Safety Act 2013 s2* "domestic violence" means: (a) physical abuse; (b) sexual abuse; (c) emotional, verbal and psychological abuse; (d) intimidation; (e) harassment; (f) stalking; (g) any other controlling or abusive behaviour towards a complainant where such conduct harms, or may cause imminent harm to, the safety, health or wellbeing of the complainant. Further defines "emotional, verbal and psychological abuse" and "harassment" and the various forms they take illustrating a pattern of controlling behaviours. Economic violence is omitted.

Domain	Sub-domain	Specific indicators	Status	Notes
Gender-based violence	National action plan or strategy on violence against women	Domestic violence legislation covers marital relationships	Yes	*Family Safety Act 2013 s2* defines 'domestic relationship' as (a) they are or were married to each other, whether in accordance to law, custom or religion;
		Domestic violence legislation covers non-marital relationships	Yes	*Family Safety Act 2013 s2* defines 'domestic relationship' as (b) they live or lived together in a relationship in the nature of marriage, although they are not, or were not, married to each other;
		Domestic violence legislation covers same sex relationships	Partial	While same sex relationships are not specifically mentioned in Section 2 of *Family Safety Act 2013* (where the meaning of 'domestic relationship' is specified), the definition of domestic relationship is framed in gender neutral terms and many of the examples included apply to same sex relationships. However, it should be noted that the *Crimes Act 2013 s67; s68; s71* criminalises consensual sex between men which may limit the ability of men in same sex relationships to access protection under the law.
		Domestic violence legislation covers non-cohabiting relationships	Yes	*Family Safety Act 2013 s2* defines 'domestic relationship' as (f) they are or were in an engagement, courtship or customary relationship, including an actual or perceived intimate or sexual relationship of any duration
		Domestic violence legislation covers family relationships	Yes	*Family Safety Act 2013 s2* defines 'domestic relationship' as (c) they are the parents of a child or are persons who have or had parental responsibility for that child; (d) they are family members related by blood or marriage; (e) they are family members related by legal or customary adoption
		Domestic violence legislation covers members of household	Yes	*Family Safety Act 2013 s2* defines 'domestic relationship' as (g) they share or recently shared the same residence
		Broad definition of sexual assault including rape, characterised as a crime against the right to personal security and physical, sexual and psychological integrity?	Partial	As above, *Crimes Act 2013* contains a narrow definition of rape. The *Family Safety Act 2013 s2* states that 'sexual abuse" means any conduct that abuses, humiliates, degrades or otherwise violates the sexual integrity and privacy of the complainant without his or her free will or consent'.

Domain	Sub-domain	Specific indicators	Status	Notes
Gender-based violence	National action plan or strategy on violence against women	Sexual assault within a relationship specifically criminalised (e.g. "no marriage or relationship constitute a defense to a charge of sexual assault under the legislation")?	**Yes**	*The Crimes Act* 2013 49 (4) States 'person may be convicted of sexual violation in respect of sexual connection with another person notwithstanding that those persons were married to each other at the time of that sexual connection'. This removes the specific exemption of marital rape contained in the Crimes Ordinance 1961 Note that sexual violation in respect of 'sexual connection' carries with it a lesser penalty (maximum of 14 years) compared to 'rape' (maximum of life imprisonment). This implies a view that marital rape is a less serious offense than non-marital rape though at the time of the review there were no case law examples of marital rape convictions for Samoa on PacLII
		In relation to sexual assault, defense of consent is defined as 'unequivocal and voluntary agreement' explicitly including a non-exhaustive list of circumstances which cannot constitute consent	**Yes**	*The Crimes Act 2013 ss50,* 54 defines sexual consent as freely and voluntarily given. A non-exhaustive list of circumstances not constituting consent is outlined including circumstances of threat, intimidation and fear (S51). S4 provides a separate offence for sexual conduct with consent induced by threats.
		Prohibitions on the use of corroboration, prior sexual conduct and proof of resistance in sexual offence proceedings	**Partial**	*The Evidence Act 2015 s 34* outlines what is admissible in evidence of sexual experience of complainants in trials of sexual cases. It prohibits questioning of the complainant or submission of evidence relating to reputation in sexual matters or experience with any person other than the defendant. This does not fully prohibit use of prior sexual conduct in sexual offence proceedings. *The Evidence Act 2015 s 98* provides that it is not necessary in a criminal proceeding for the evidence on which the prosecution relies to be corroborated, except with respect to the offences of perjury or treason under the Crimes Act 2013 *Crimes Act 2013 S 51(a)* states that it is not consent merely because the person does not protest or physically resist the sexual connection or other sexual activity.

Domain	Sub-Domain	Specific indicators	Status	Notes
Gender-based violence	National action plan or strategy on violence against women	Legislation guarantees Issuance and monitoring of eviction, protection, restraining or emergency barring orders against alleged perpetrators, including adequate sanctions for non-compliance	**Yes**	*Family Safety Act 2013 s4* provides that a Protection Order can be sought to protect victim survivors of domestic violence. Applications for Protection Orders may be made by the complainant, or someone on behalf of the complainant (for example legal counsel, Village Representative, Child Welfare Officer, counsellor, health service provider, social worker or teacher) however only on written consent of the complainant (s 14, s 19). Protection Order matters are civil in nature unless the order is breached, which constitutes an offence punishable up to 6 months imprisonment (s 11). The *Family Safety Act* 2013 also provides an avenue for an Interim Protection Order which could be made by the complainant or the Court where there is sufficient evidence that an act of domestic violence has been committed and 'the complainant is likely to be either physically or sexually assaulted as a result of such domestic violence if a protection order is not issues immediately' (s5)
	Health sector response to GBV	Are there clinical guidelines/ SoP for identification and management of cases of GBV, including sexual assault and domestic violence, for use in the health sector?	**Partial**	To date, this has been a gap in Samoa. A Standard Operating Procedures for Clinical Management of Rape, Sexual Violence and Gender-based Violence was under development at the time of this review and was launched in October 2021. This draws from the WHO's 2019 training curriculum that uses the recommendations from the WHO Clinical handbook: Healthcare for women subjected to intimate partner violence or sexual violence. These Standard Operating Procedures (SOPs) will present clear procedures, roles, and responsibilities for healthcare providers in primary, secondary and tertiary level healthcare facilities in Samoa
		Does legislation or policy guarantee access to healthcare and reproductive health care (incl. emergency contraception and post exposure prophylaxis against HIV) for victim/ survivors of GBV?	**Partial**	The *Domestic Violence Act* 2009 s 15 (2) provides that a Police Officer must (a) where necessary, make arrangements for the complainant and the complainant's dependants to find a suitable shelter, to obtain medical treatment or counselling service where needed. However, there are no legislative guarantees to reproductive health care, emergency contraception and post exposure prophylaxis against HIV specifically. National HIV, AIDS & STI Policy 2017-2022 includes a commitment to ensuring sexual assault victims can access exposure prophylaxis and emergency contraception who report to car within 5 days (p61) There is an opportunity for the Standard Operating Procedures for Clinical Management of Rape Sexual Violence and Gender-based Violence (recently launched) to provide a stronger policy mandate guaranteeing access to essential health services.

Domain	Sub-domain	Specific indicators	Status	Notes
Gender-based violence	Health sector response to GBV	No restrictions on the above based on marital status, residency, age or other factors?	Partial	As per other SRH indicator, there are no legislative restrictions however there are some contradictory provisions in the National HIV, AIDS & STI Policy 2017-2022 requiring parental or guardian consent for HIV or STI testing and no clear guidelines on access to contraceptives (including emergency contraception).
SRH and GBV in key populations (cross cutting)	Legislative barriers	No additional legislation that restricts access to SRH or GBV response services, or otherwise undermines the SRH and protection from GBV, for:		
		Adolescents and youth	No	As above, there are a number of gaps in legislation directly impacting on SRHR for adolescents and youth and laws increasing vulnerability to early marriage. There is currently no comprehensive legislative framework for the protection of children – the authors are aware of the *Child Care and Protection Bill 2013*l however it is unclear how this is progressing through to the Legislative Assembly. While corporal punishment is banned in Educational settings under the Education Act 2009 s 23, it does not extend to other settings and is contradicted by s 14 of the *Infants Ordinance Act* 'right of a parent, secondary school teacher, or other person having lawful control or charge of a child to administer reasonable punishment to the child'. Note: 'reasonable punishment' is not defined.
		People with disabilities	Partial	While there is no additional legislation that directly restricts access to SRH or protection from GBV for people with disabilities, there are extremely limited protections for people with disabilities under the law (including omission from ani-discrimination law). There are no protections in legislation for the SRHR of people with disabilities (including the right to reproductive choice)
		LGBTIQ people	No	*Crimes Act 2013 s67; s68; s71* criminalise consensual sex between men which may limit the ability of men in same sex relationships to access protection under the law and creates a barrier to accessing SRH. Other gender and sexually diverse groups are invisible under the law.
		Sex workers	No	*The Crimes Act s 72.* Prostitution – (1) A person is liable to imprisonment for a term not exceeding 3 years who has sexual intercourse or sexual connection, or agrees, or offers to have sexual intercourse or sexual connection with another person for gain or reward. Criminilisation of sex work creates a barrier for this group accessing SRH and creates additional vulnerabilities to GBV.

Domain	Sub-domain	Specific indicators	Status	Notes
SRH and GBV in key populations (cross cutting)	Special provision	Special provisions in legislation or policy to improve access to SRH and ensure protection from GBV for:		
		Adolescents and youth	**Yes**	There are some protections for children form abuse and violence under the *Family Safety Act 2013 and the Crime Act 2013* (outlined in the main report). Adolescents and youth are targeted as a key population group in a number of polices and plans, including: • The National Sexual and Reproductive Health Policy 2018-2023 • The National HIV, AIDS & STI Policy 2017-2022 • The National Policy on Family Safety: Elimination of Family Violence 2021 – 2031 • National Policy on Gender Equality and Rights of Women and Girls 2021-2031 • The National Child Care and Protection Policy 2020-2030 • The Samoa Interagency Services Guide (IESG) to Gender-based Violence and Child Protection (2021)

Domain	Sub-domain	Specific indicators	Status	Notes
SRH and GBV in key populations (cross cutting)	Special provision	People with disabilities	**Partial**	Crimes Act 2013 s63 (1) penalises a person who has or attempts to have a sexual connection with a person who is severely intellectually disabled to imprisonment for a term not exceeding 7 years; s 63(2) penalises a person who indecently assaults or attempts to indecently assault a person who is severely intellectually disabled to imprisonment for a term not exceeding 7 years. Mental Health Act 2007 s3. […] objectives and principles: (a) to ensure that persons with a mental disorder receive the best possible care, support and, where required, treatment and protection; (c) to minimise the restrictions upon the liberty of persons with a mental disorder and interference in their rights, dignity and self-respect, so for as is consistent with their proper care, support, treatment and protection and the protection of other persons; (i) to eliminate discrimination against, and abuse, mistreatment and neglect of persons with a mental disorder Newly launched Samoa National Policy on Disability 2021-2031 • Outcome Area 3: Strengthened provisions of support, health services and assistive devices (including SRH) • Outcome Area 6: Enabling environment for disability-inclusive development strengthened. Full harmonisation of Samoa laws with the UNCRPD. This includes the possibility of developing a Disability Bill (legislation) for Samoa to address existing gaps with disability-inclusion. (p18) The National Policy is silent on GBV beyond disaggregating GBV data. There is some integration of disability into key SRH and GBV related policy, including: MWCSD Strategic Corporate Plan Outcome 31. Ending violence in the family and especially against women including a target to reduce violence against persons with disability; Outcome 3.3 with targets strengthened provision of support, health services and assistive devices for persons with disability and [separately] sexual reproductive health rights for vulnerable groups. The IESG mentions disability in commitment to providing inclusive services and identifies disability disaggregated data as a gap however does not provide detailed guidance in relation to GBV service provision for people with disabilities. The National HIV, AIDS & STI Policy 2017-2022 identifies people with disabilities as a key population group to target in ensuring accessibility of services however provides to specific guidelines or targets in relation to achieving improved accessibility. The Community Development Plan 2021-2026 promotes a disability inclusive approach including a focus on the reproductive health status of women with disabilities The National Policy on Family Safety: Elimination of Family Violence 2021 – 2031 Outcome Area 1 is reduced violence against women and children, persons with disabilities, elderly as well as other vulnerable populations.

Domain	Sub-domain	Specific indicators	Status	Notes
SRH and GBV in Key populations (cross cutting)	Special provision	Sex workers	Partial	There are extremely limited policy provisions in relation to SRH and GBV for sex workers, likely due to their illegal status in Samoa. The National HIV, AIDS & STI Policy 2017-2022 identifies sex workers as a key population as having a high risk for HIV and STIs or unique health needs with regards to prevention or treatment. Strategic objective 3 b) Identify and eliminate barriers for all populations to get screened for HIV and STI's, particularly youth, fa'afafine, sex workers, inmates, and partners of ANC women. The policy also highlights the importance of confidentiality being maintained for sex workers to ensure that their use of prevention services does not expose them to legal risk.
		LGBTIQ people	Partial	There is some limited integration in policy: The National Policy on Family Safety: Elimination of Family Violence 2021 – 2031 mentions people with gender diverse identities and broadly mentions including them in early intervention and service delivery. The National HIV, AIDS & STI Policy 2017-2022 identifies people fa'afafine and fa'atama and men who have sex with men as a key group to target in ensuring accessibility of services however provides no specific guidelines or targets in relation to achieving improved accessibility. The National Policy on Gender Equality and Rights of Women and Girls 2021-2031 includes targets: • 2.6 'Improved access to SRH and other basic services' – 'develop and strengthen life skills in doctors and nurses to support women, men, and people of diverse sexual orientation, gender identity and expression on contraceptive decisions, and ensure ready access to contraceptives' • 5.2 'Incorporate increased gender sensitivity in all aspects of transnational crime prevention, law enforcement responses and services rendered, particularly in relation to human trafficking. This should include attention to the special needs and situation of men, women, and people with diverse sexual orientation, gender identity and expression'.
Plural legal systems		No constitutional / statutory/customary/ traditional/ religious laws contradictory to any of the above	No	Samoa's *Constitution* has provisions for Samoan customs as well as democratic laws (s 11 (1)). The Constitution does not clearly establish the relationship between customary and statutory law. Under the *Village Fono* Act 1990 s 8 'when punishment has been imposed by a Village Fono in respect of village misconduct by any person and that person is convicted by a Court of a crime or offence in respect of the same matter the Court shall take into account in mitigation of sentence the punishment imposed by that Village Fono'. Customary reconciliation such as ifoga has resulted in a reduction of sentence in cases involving violence against women (for example, domestic violence, sexual violence, etc.)

Domain	Sub-domain	Specific indicators	Status	Notes
Humanitarian and disaster	Provisions for SRH in disaster legislation and national plans	Are there provisions in relevant health or disaster policy and legislation to require that the Minimum Initial Service Package (MISP) for SRH objectives and related indicators are assessed, resourced and delivered?	**Partial**	The policy environment provides a broad mandate for MISP (and training is provided by IPPF/SFHA) however it is not explicitly endorsed in disaster policy. MISP training is delivered by SFHA with IPPF support. For example, the National Disaster Management Plan (NDMP) 2017 includes gender and disability as a cross cutting issue and requires all sectors including Health to have sector specific plans. It also stipulates "promote safe delivery and provide reproductive health services". The ND requires costing for health promotion and health management of GBV and VAW (Disaster Advisory Committee, 2017) The Samoa Inter-agency Essential Services Guide for Responding to Gender-Based Violence and for Child Protection, applies to emergencies (Samoa Ministry of Women Community & Social Development, 2021) *Disaster Emergency Management Act (DEMA) 2007* is reportedly under review. The 2016 Red Cross legal review made a range of recommendations including, "Professions such as the Medical Council and Council of Nursing and Midwifery should clearly set out their simplified registration process and basic requirements of compliance applicable to international relief personnel before temporary licenses are approved and issued during times of disasters"; The Samoan National Sexual Reproductive Health Policy for 2018-2023 – lacks explicit policy commitment to SRHiE and MISP
	Provisions for GBV in disaster legislation and national policy and plans	Are there provisions to respond to VAW/ GBV in Emergencies in legislation, policy and plans? Are the specific provisions in policy and legislation to require alignment with the Minimum Standards for Prevention and Response to Gender-Based Violence in Emergencies.	**Partial**	The National Disaster Management Plan (NDMP) 2017-includes gender and disability as a cross cutting issue and requires all sectors including Health to have sector specific plans. The NDMP also requires costing for health promotion and health management of GBV and VAW (Disaster Advisory Committee, 2017) The Samoa Inter-agency Essential Services Guide for Responding to Gender-Based Violence and for Child Protection, applies to emergencies (Samoa Ministry of Women Community & Social Development, 2021). The newly launched Standard Operating Procedures for Clinical Management of Rape Sexual Violence and Gender-based Violence includes an annex on GBViE. *Disaster Emergency Management Act (DEMA) 2007* – is reportedly under review which may provide an opportunity to strengthen consideration of SRH and GBV in emergencies. The regional COVID-19 humanitarian partnership also provides an enabling environment for action on GBViE. Accessibility and scale up of quality protection services, including child protection, gender-based violence response and prevention and psycho-social support will be vital to mitigate the protection impacts of COVID-19 (Pacific Humanitarian Team, 2021).[5] Although the Samoa Climate Change Policy (2020-2030) does not integrate SRH and GBV specifically, it does state "the policy will assist with the inter-linkages with other related regional and international obligations such as gender equality, oceans and the implementation of the Sustainable Development Goals (SDGs)"

5 The Pacific Humanitarian Team COVID-19 Humanitarian Response Plan, https://reliefweb.int/sites/reliefweb.int/files/resources/PHT%20HRP%20COVID-19%20Final%20Report%202021_05_12.pdf

4 Sexual and reproductive health in law and policy

This section of the report outlines national policy documents, highlighting their relevance to SRHR. Policies along with key legislation governing access to SRHR are then explored further according to key SRH domains developed for this review. As noted earlier, there is substantial overlap between issues relevant to SRHR and to GBV, though the current policy landscape specifically relevant to GBV will be the focus of Section 5 of this report.

4.1. Domestic legislation and policy

The following table summarises the key national legislation, policies and guidelines that govern access to sexual and reproductive health in Samoa.

Table 5: Domestic legislation and policies that relate to sexual and reproductive health in Samoa

Legislation
Ministry of Health Act 2006 and Amendment Act 2019
Crimes Act 2013
Family Safety Act 2013
Nursing and Midwifery Act 2007
Education Act 2009 and Amendment Act 2019
Labour and Employment Relations Act 2013
Marriage Ordinance Act 1961
Child Care and Protection Bill 2013

Lead Ministry	Policies and guidelines
Ministry of Finance	Strategy for the Development of Samoa 2016-2020 (new 2021-2025)
	Samoa Population Action Plan 2017-2021
Ministry of Health	Health Sector Plan 2019-2029
	National Sexual and Reproductive Health Policy 2018-2023 (current)
	National HIV, AIDS & STI Policy 2017-2022
	National Guideline on ARV 2018
	National Guideline on HIV Testing Services (HTS) 2018
	National Guideline on Prevention of MTCT HIV, Syphilis, Hepatitis 2018
	National Guidelines on STI 2018
	HIV, STI and AIDS M&E Reference Manual 2017
Ministry of Women, Community and Social Development	National Policy on Gender Equality and Rights of Women and Girls 2021-2031
	National Policy for Persons with Disability 2021-2031
	National Child Care and Protection Policy 2020-2030
	MWCSD Strategic Plan 2021-2026
	Gender Implementation Strategy for the Reproductive and Sexual Health of Women in Samoa 2014-2018 (out of date)

Samoa's National Sexual and Reproductive Health Policy 2018-2023 developed by the Ministry of Health together with related policies (particularly those developed by the Ministry of Women, Community and Social Development) have broadly promoted a similar comprehensive package of essential SRH services to those proposed by the Guttmacher-Lancet Commission (Starrs, et al., 2018). Key policy and strategy documents are briefly summarised below.

The Strategy for the Development of Samoa 2016 -2019/20 (new 2021-2025)

Of the national plans relevant to SRH, the *Strategy for the Development of Samoa (SDS)* is the broadest and highest level. It identifies the four priority areas of development: Economic, Social, Infrastructure and Environment. Across these four priority areas there are 14 key outcomes to be achieved for Samoa over the life of the plan, translating to 14 different sectors, each with its own sector plan. Consultations were held for the new 2021-2025 plan in July 2020. It is unclear whether implementation of the SDS 2016-2020 has undergone an evaluation. There has been reference made to the SDS 2021-2025 in newly released policy, however at the time of writing the authors have not been able to access the updated strategy.

The SDS presents a whole of Government approach to planning and budgeting with a focus on mainstreaming gender, human rights, climate and disaster resilience along with alignment with key international commitments including the Sustainable Development Goals. Health is assigned as Key Outcome 6 under Priority Area 2 'Social Policies'. The Samoa Health Sector plan sits under this broader strategy along with 14 other sector specific plans.

The Samoa Population Action Plan 2016-2021

Launched in 2017, this four-year plan brings together population issues and national planning aligned with the SDS. The plan was developed in response to aligning Samoa's demographic changes with the availability of resources (MoF, 2016). A key focus area identified in this policy is a focus on fertility (including sexual and reproductive health ion particular, decreased adolescent birth rate and increased awareness of the benefits of family planning are identified as outcomes in the plan's implementation framework.

Samoa Health Sector Plan 2019/20 – 2029/30

As discussed, the Ministry of Health Samoa Health Sector Plan (HSP) sits under the umbrella of the SDS and prioritises strengthening Samoa's Public Health System following the merger between the Ministry of Health and the National Health Service. The HSP aims to strengthen and scale up the fa'a-Samoa initiative ('Samoan way') of delivering PCH to its communities. This village-based approach empowers and trains Village Women's Committees utilising a family orientated community engagement strategy for prevention, early detection and diagnosis through referral at a community level to rural health facilities and if necessary tertiary health facilities (MoH, 2020a).

Samoa Health Sector Plan outlines 7 key outcome areas including:

- **Outcome 3 –** 'Improved prevention, control and management of non-communicable diseases' which covers STIs;
- **Outcome 4 –** 'Improved Sexual and Reproductive Health'; and
- **Outcome 5 –** 'Improved Maternal and Child Health'.

There are some broad SRHR indicators cited in-text under each outcome area, however there was no detailed Implementation/ Action Plan with specific outputs, activities and indicators incorporated into the plan. It is possible that this is still under development or simply not yet publicly available.

As discussed, the plan does outline an indicative health financing framework with dedicated budget for achieving Key Outcome 4 (Improved SRH) and Key Outcome 5 (Improved Maternal and Child Health), however these only make up 10.43% and 0.05% of total health funding respectively (MoH, 2020a).

The National Sexual and Reproductive Health Policy 2018-2023

Also developed by the Ministry of Health, the National Sexual and Reproductive Health Policy includes a costed Strategic Plan of Action and identifies the following key strategic areas;

1. Governance leadership and partnership (including improving stakeholder participation in advocacy programmes and policy dialogue and integrating SRH in other relevant public health policies)
2. Demand for and supply of sexual and reproductive health services (availability, accessibility, affordability and quality)
3. Financing (affordability and sustainability)
4. Information, education, awareness and research (SRHR information, education and media)
5. Commodities and medical products
6. Health Workforce (human resources and capacity building)
7. Monitoring and Evaluation (MoH, 2018f)

The policy builds on four sexual and reproductive health components: maternal health or safe motherhood (including family planning, antenatal care and essential obstetric care), fertility regulation (including contraception), prevention and control of sexually transmitted infections (including HIV) and GBV (MoH, 2018f). While the previous National SRH policy 2011-2016 did not specifically include GBV, the new SRH Policy articulates GBV as being a fundamental issue in achieving access to SRH (MoH, 2018f). Despite this, there are no specific GBV outcomes or targets identified in the policy. Adolescents and youth are

incorporated as a central focus of this policy including key targets pertaining to increased provision of youth friendly services, increased contraceptive prevalence, comprehensive sexual and reproductive health and rights information and counselling for adolescents.

National HIV, AIDS & STI Policy 2017-2022

The goal of this National Policy on HIV, AIDS, and STIs is to provide a framework for coordination of the National multi-sectoral response across the health sector by the Ministry of Health, other key service providers including non-government organisations, and relevant national coordination committees. A suite of guidelines sit under this overarching policy. The policy comprehensively addresses commitments towards achieving the SDGs, as well as the WHO and UNAIDS goals and aligns itself with the previous iteration of the HSP. It provides an overview of legislation relating to HIV, STIs and AIDS and where gaps are identified provides policy guidance, for example in relation to confidentiality of health information (which has since been legislated under the *Ministry of Health Amendment Act 2019*). The policy includes a costed Plan of Action, noting that budget was included for only for the first two years of the life of the policy at a total of SAT $527,969.86. At the time of review, it is unclear to what extent targets have been achieved to date nor budget allocation for the final years of implementation. The policy is earmarked for review under the National SRH Policy 2018-2023.

Community Development Sector Plan 2021-2026 & MWCSD Strategic Plan 2021-2026

The Ministry of Women, Community and Social Development (MWCSD) is the lead agency for the development of the *Community Development Sector Plan (CDSP)*, which is one of the 14 sector plans that sit under the SDS. The recently launched *CDSP* 2021-2026 builds on key findings from the review of the previous 2016-2021 iteration. Its primary goal is 'enhanced inclusive development, improved economic empowerment and social outcomes for communities' (MSWCD, 2021a p38). The plan maps outcomes included in other relevant national policies, strategies and plans in order to mobilise and align community development efforts towards achieving cross sector development goals. This in turn feeds up into the SDS monitoring and evaluation framework.

The CDSP outlines a 'Medium Term (5 year) Expenditure Framework' itemised against the 'intermediate targets' established in the plan. This allows the Ministry of Women, Community and Social Development to estimate costs associated with the achievement of targets and then source funding accordingly. The Ministry of Women, Community and Social Development receives limited funding from the Government of Samoa and rely heavily upon donor assistance to implement its program of work around gender equality, family violence, child care and protection and inclusive development. This poses a significant risk to the sustainability of work under the Ministry of Women, Community and Social Development and the achievement of outcomes in the CDSP.

The plan includes a detailed Monitoring, Evaluation and Reporting Framework that links high level indicators with intermediate targets. The particularly relevant to SRHR, include:

Table 6: SRHR relevant CDSP targets and indicators

CDS intermediate targets	High level indicators
1.2 Community leadership improved at all levels	5.6.1 Proportion of women aged 15–49 years who make their own informed decisions regarding sexual relations, contraceptive use and reproductive health care (SDG indicator)
3.3 Improved health outcomes	• Proportion of persons with disability accessing health services • Proportion of adolescents and youth accessing and using health services • Number of teenage pregnancies • Reproductive health services usage numbers by sex, age, geographical location • Number of Unmet family planning needs activities and services provided • Proportion of couples with unmet family planning needs access services and have their family planning needs met. • Number of contraceptives distributed by sex, age and regional location
3.4 Improved education outcomes	Family life education services delivered by sex, age and region
3.6 Improved law and justice for social outcomes	5.6.2 Number of countries with laws and regulations that guarantee full and equal access to women and men aged 15 years and older to sexual and reproductive health care, information and education (SDG Indicator)

Source: CDSP 2021-2026

The *Ministry of Women, Community and Social Development Strategic Plan 2021-2026* outlines the institutional mechanism made up of five key divisions through which the CDSP is delivered. The Strategic Plan reflects the CDSP a high-level commitment to improving sexual and reproductive rights for vulnerable groups and has a focus on improved law and justice particularly in relation to gender and GBV discussed further in Section 5.

National Policy on Gender Equality and Rights of Women and Girls 2021-2031

This newly launched policy aligns with the Convention of the Elimination of All Forms of Discrimination against Women (CEDAW), Convention of the Rights of the Child (CRC), the Convention of the Rights of Persons with Disabilities (CRPD), the SDG agenda and includes key policy targets that directly answer recommendations out of the CEDAW committee's concluding observations on the sixth periodic report of Samoa (CEDAW Committee, 2018). The policy broadly commits to using a gender transformative approach, 'recognising the importance of simultaneously tackling the visible and technical challenges of gender inequalities and changing the power structures and systems of beliefs and norms which keep the injustices and inequalities in place' (MWCSD, 2021b p8).

The policy sets out outcomes and targets against key Priority Areas: Economic, Health, Education, Leadership and Decision-making, Access to Law and Justice, Infrastructure, Environment; and a cross cutting 'supporting outcome' including strengthening of the constitutional, legislative and policy environment; institutional strengthening of the women's machinery and strengthened research, data and knowledge.

While all targets included in the policy broadly contribute to SRHR through advancing gender equality, there are some key targets specific to SRHR important to note:

- 2.3 Consider incorporating a gender transformative approach in all health initiatives (p12)
- 2.6. Improved access to SRH and other basic services (p13)
- 3.4. Incorporate school and tertiary curriculum with topics of life skills, GBV, SRH, food security & nutrition and human rights. (p14)
- 3.5. Safe school policy is strengthened and monitored (p14)

The policy outlines an ambitious agenda. There is no costed action/ implementation plan attached to the policy however it does outline Monitoring and Evaluation (M&E) processes that 'may involve', an annual plan and budget, reviews and quarterly reporting. The policy states that 'the Ministry of Women, Community and Social Development may consider consolidating its M&E processes for Gender Equality with the rest of its community development work under the Community Sector Plan' (MWCSD, 2021b p28). It will be vital to ensure that this policy and the Ministry of Women, Community and Social Development broadly are adequately resourced to monitor and implement these important policy targets.

National Policy for Persons with Disability 2021-2031

This National Policy seeks to advance the disability-inclusive development agenda in Samoa. It builds on the progress made under the previous 2009-2012 National Policy for Persons with Disability. There does not appear to have been an evaluation of the previous National Policy, however the newly launched policy cites achievements including Samoa's 'ratification of the CRPD; establishment of a mobility device service; improving hearing services, access to sexual and reproductive health services and inclusive education; reduction of barriers for persons with disabilities to vote; and improving data and evidence on disability' (MWCSD, 2021c, p5). Whilst the previous policy made no explicit mention of SRHR of person with disabilities, there are some specific targets under 'Outcome Area 3: Strengthened provisions of support, health services and assistive devices':

- Strengthen sexual and reproductive health (SRH) education also through family life education and other community education and awareness programs;
- Strengthened provisions of support, health services and assistive devices (p15).

The remainder of Section 4 of this report explores Samoa's policies and legislation in relation to SRH key domains developed for this review.

4.2. Contraception and family planning

Background

Samoa's previously rising fertility rate has provided a challenge for policy makers and the health sector. There is a suggestion that Samoa arrested the fertility decline of the early 1980s and has entered 'a phase of reversed fertility transition', with fertility now on the increase (New Zealand Foreign Affairs and Trade Aid Programme [NZFAT], UNFPA, 2015, p.14). This suggestion has been countered by more recent trends showing a drop from five children per female in 2014 to four in 2016 (Samoa Bureau of Statistics, 2019, p. 5). Despite this, the total fertility rate in Samoa remains high compared with other Pacific Island Nations.

The adolescent fertility rate showed a slight decrease from the 2001 census to the 2016 census (from 46 children per 1000 adolescent women to 31 per 1000) (SBS, 2020b). The number of males and females in the reproductive age category (15-49 years) is increasing, with 50 percent of the total population below the age of 21 years old (SBS, 2019).

Modern contraceptive prevalence remains low in Samoa with data indicating a large unmet need for family planning. A Sexual and Reproductive Health needs analysis (2015) found that 45.5 per cent of women of childbearing age who either did not want to have children, or wished to delay child bearing, were currently not using contraceptives (NZFAT & UNFPA, p. 8). Male and female condoms, emergency contraception (Levonorgestrel 0.75 mg and 1.5mg), implantable contraceptives – Estonogestrel (Implanon) & Levonorgestrel (Jadelle) and copper intrauterine contraceptive device (IUCD) are all included in the Samoa Essential Medicines List (EML). The most common forms of contraceptives currently in use are injectable and oral forms, followed by male condoms (NZFAT & UNFPA, 2015). Condoms are readily accessible in Apia but accessibility is variable in district health centres due to geographical, cultural and religious barriers (MoH, 2017, p. 40). Condom distribution is also reliant on easy accessibility, widespread distribution and regular monitoring of stock. A Health Facility Readiness and Service Availability (HFRSA) Assessment (UNFPA, 2018) found that male condoms, injectables and oral contraceptives were widely available across all 14 facilitates audited with once facility stocked out of male condoms on the day of the visit. Of important note, the HFRSA also found that of the five facilities that had managed emergency contraceptives in the previous 12 months, only one had the product in stock on the day of the visit (UNFPA, 2018).

Legislation and policy

Legislation in Samoa does not fully guarantee access to contraceptive services nor provision of full, free and informed consent for contraceptive services. While the *Ministry of Health Act 2006 Schedule (2 s (1.5))* stipulates that the Ministry of Health is required to provide c) Health Preventive Services, including (vii) Reproductive Health, there is no provision in the Constitution or other legislation that guarantees the right to healthcare broadly or access to family planning specifically.

Access to contraceptives (including emergency contraception) are not subject to any legal prohibitions or restrictions on the basis of age, marital status or need for third party authorisation in Samoa. However, the absence of specific laws guaranteeing the right to access, and provision of full, free and informed consent may create confusion for family planning service providers and practitioners as well as consumers, particularly in relation to access to contraceptives for 'minors' without the need for parental consent or for persons with disabilities considering their right to reproductive choice. While there are multiple policy commitments around the provision of adolescent and youth friendly SRH services including contraceptives, there are currently no specific guidelines around consent to access contraceptives.

In Samoa, the *Constitution* allows for … 'English common law and equity for the time being in so far as they are not excluded by any other law in force in Samoa' (s1 (1)). Where there are no specific restrictive laws to the contrary, English common law recognises that a child or young person may have the capacity to consent to medical treatment on their own behalf (Miller, 2019). This common law position is based on a 1989 English House of Lords judgement, Gilick v Wisbech Area Health Authority which established that the medical practitioner was allowed to prescribe a legal minor the oral contraceptive pill without prior knowledge or consent of her parents on the basis that the young person had 'sufficient understanding and intelligence' to provide informed consent (Miller, 2019). This is sometimes referred to as 'Gilick competence', the 'mature minor' or the evolving capacity of the child.

Policy commitments on improving access to family planning services and increasing the contraceptive prevalence rate go some way towards addressing the gaps in legislation:

- *The Health Sector Plan (HSP) 2019-2029* and the *National SRH Policy 2018-2023* both include a target of increasing the contraceptive prevalence rate to 80% by 2030. The HSP has an additional target to expand the coverage of modern family planning methods so that at least 95% of women at reproductive age (15-49) who currently use family planning are satisfied with those modern methods (MoH, 2020a). Notably, the outputs and indicators in the National SRH Policy 2018-23 around increasing contraceptive prevalence

only specify availability of condoms with no specific outputs targeting availability of oral contraceptives, injectables, implants and intra-uterine contraceptive devices.

The National HIV, AIDS & STI Policy 2017-2022 states that 'Sexual assault and SRH services emergency contraception shall be covered by the national healthcare system for all women to who report for care within 5 days. Sufficient pharmaceutical stock shall be ensured, and stock-outs minimized' (p62).

National Policy on Gender Equality and Rights of Women and Girls 2021-2031 establishes a target to 'ensure that modern contraceptives are accessible, affordable and available without a requirement for third-party consent.' (p13).

At the time of writing, the authors are unaware of any clinical or facility level guidelines that contradict the above policy statements, as it was beyond the scope of this review to source these documents. However, there is anecdotal evidence that 3rd party authorisation for contraceptives is being implemented in practice, for example the Human Rights Council Working Group in in their report on discrimination against women in law and practice in Samoa, noted that health professionals reported that contraceptives were provided as long as the husband had consented after filling in a form and that minor girls have to be accompanied by an adult (OHCHR, 2018).

Also, of particular relevance to this review in relation to contraception are findings from the Samoa Family Health and Safety Study (SFHSS) (Pacific Community, 2006). The survey found that 14.7 per cent respondents who had experienced intimate partner violence compared with only 5.3 per cent of respondents who had not experienced violence, 'had partners who opposed their use of contraception with anger, threats, assault removing or destroying contraceptives or other indications of disapproval' (Pacific Community, 2006, p30). Respondents who experienced sexual violence as opposed to physical or emotional violence, were most likely to have partners who disapproved of contraception. Reproductive coercion is a behaviour that restricts a woman's autonomous reproductive health decision making. There has been very limited research conducted on this issue in the Pacific. More needs to be understood about this issue in Samoa to ensure appropriate legislative protections and policy responses are in place.

4.3. Sexual health

4.3.1. Sexually transmitted infections and HIV

Background

The prevalence of HIV is low in Samoa, however, the rates of chlamydia, which potentially elevates the risk for HIV transmissions, have been rising since 2008 and, in 2011, were some of the highest in the world at 31.3 per cent. Young people between the ages of 15 and 24 years are at high risk, accounting for nearly 41 per cent of all chlamydia infections in 2017 (MoH, 2018d). Prevalence is also high among pregnant women: of 2,025 women tested at hospitals and health clinics in 2015, 26 per cent had chlamydia (MoH, 2017b, p. 19). It is estimated that prevalence could be higher in rural areas (Ibid.).

The Presumptive Treatment for Chlamydia Infections Protocol was developed in 2015, in response to the high rates of chlamydia. Under this protocol, all antenatal women and partners would be administered Azithromycin when they presented to their first antenatal visit (MoH, 2018). While there was a slight decrease in the prevalence of chlamydia between 2015-2017, it is unclear whether it was a result of the protocol (Ibid).

There has been a slight increase in syphilis infection rates (0.2 per cent in 2013 to 0.3 per cent in 2014 and 2015), a slight decrease in Hepatitis B (2.5 per cent in 2013 to 2 per cent in 2015). There has been no

screening for gonorrhoea in the 2013-2015 period (MoH, 2017b). More recently, syphilis positive cases have been higher in the over-45 population compared to the 15-24 age group (Carney et al., 2020). Carney et al. suggests that this could be 'due to untreated syphilis cases being detected in late tertiary stage after an initial infection, when advanced symptoms surface' (p. 4).

In general, testing rates for sexually transmitted infections (STIs) and HIV remain low, especially among men. According to Nishijima et al. (2020), there is also a lack of 'operational strategy for partner tracing' (p. 37). Testing is mostly conducted for mothers who present for their first antenatal care visit. For this reason, it is difficult to calculate the full extent of HIV prevalence in Samoa.

Legislation and policy

Samoa does not have any specific HIV, AIDS and/or STI legislation, nor any law guaranteeing voluntary counselling, testing and treatment.

The Ministry of Health in Samoa has set out a suite of guidelines relating to STIs and HIV, including guidelines on the prevention of mother to child transmission of HIV; syphilis and Hepatitis B and C (2018e); HIV testing services (2018d); the use of antiretroviral drugs for treating and preventing HIV infection (2018b); and STI diagnosis, treatment and management (2018c). In 2017, the Health Guidelines for Tattooing were also developed.

These guidelines and manuals sit under the government's *National HIV, AIDS, and STI Policy 2017-2022 and HIV, AIDS, STI and TB Monitoring and Evaluation Manual 2017.* While there is no specific legislation that addresses the testing or treatment of HIV and STIs, notions of informed consent are outlined in the National Policy of 2017-2022. The policy and its related guidelines build on the WHO Five C's – consent, confidentiality, counselling, correct test results and connection to care and treatment.

The National HIV, AIDS, and STI Policy 2017-2022 advocates a human rights approach to health and aimed to:

- improve access to voluntary testing, counselling and prophylaxis for all sectors of the population including rural and vulnerable populations;
- promote behaviour change and health education programs;
- integrate sexual health with services targeting gender-based violence; and
- increase collaboration within the health sector and across village, community, government and NGO levels of service (MoH, 2017b).

The policy stipulates that testing should be voluntary and that 'no person may be tested for HIV infection without his or her free and informed consent (except in the case of anonymous epidemiological screening programmes undertaken by authorised agencies such as the national, provincial or local health authorities or in the case of necessary population health measures under the legislative powers of the *Ministry of Health Act 2006)'* (p24).

The Health Ordinance 1959 s29 under 'infectious diseases' provides that the chief health officer may, if authorised by the Minister (e) require persons to report themselves or submit themselves for medical examination at specified times and places.

The National AIDS policy 2017-2022 specifies 'mandatory' testing for pregnant mothers at ANC appointments. It is unclear how this mandate is applied in practice. The policy recommends educating pregnant women and their partners about the risks of mother-to-child transmission and providing counselling and contraception for HIV infected women and their partners. It is stipulated that this should be provided free of charge through district and community health centres. The National Guidelines on HIV Testing Services (MoH, 2018b) mandates the testing of high-risk infants in their first two months and recommends the commencement of

antiretroviral therapy (ART) for infants who test positive with a second test to confirm their status (p. 38). The policy does explicitly state:

> Family counselling should be conducted to achieve consent for testing the child. If parents still refuse testing, the Ministry of Health can mandate the testing via powers of enforcement granted by the *Health Ordinance of 1959,* Samoa's *Constitution* and The Convention for the Rights of the Child (CRC) (p49)

The Ministry of Health also advises mothers to breastfeed their children and, in the case of HIV positive mothers, to take up ART before, during and after pregnancy to reduce the risk of mother to child transmission.

It is important to note that the *National HIV, AIDS, and STI Policy 2017-2022* does raise a possible restriction to access based on the requirement for third party authorisation, stating:

> The legal age of consent is 18 in Samoa. All children under this age will require consent of the parent except in the case of mandatory neonatal testing. Children of any age under 18 will require the consent of a parent to receive any testing (HIV, STI, TB or otherwise). Part of pre-test counselling in these cases should involve convincing both the parent and the child of the value of getting tested. In special cases children living independently, who are not in contact with parents and who do not have a guardian, will be able to consent for HIV testing after they have been provided with age-sensitive information and counselling. (p49)

This is in contradiction to the *National ARV Guidelines* that indicate in relation to testing adolescents 'Due to high social stigma, other methods of family support should be explored, as disclosure could be dangerous for the individual' (p33). Based on the current review, there also does not appear to be a legal basis for this age restriction.

Confidentiality

This policy expanded on the earlier National HIV & AIDS Policy 2011-2016, both in its inclusion of STIs and in the provision of practical guidelines. Of particular note is the policy reference to protecting the privacy and confidentiality of individuals and working to combat stigma and discrimination surrounding HIV and STIs, which previous policy initiatives had not adequately addressed. Since the policy enactment, confidentiality has been legislated for the first time in the Ministry of Health Amendment Act 2019. This broadly stipulates that any information of a person stored by the Ministry for the purpose of providing healthcare services or for health service administration of the Ministry is confidential and must not be released for any purpose. It further stipulates the limited circumstances under which this information may be accessed and provides that any person in contravention of these subsections commits an offence and is liable to an imprisonment term not exceeding 12 months or to a fine not exceeding 50 penalty units (GoS, 2019).

Inclusion and anti-discrimination

The National HIV, AIDS, and STI Policy also identifies the specific needs of key populations (youth, fa'afafine and fa'atama, men who have sex with men, rural populations and people living with disability) and the need for services to be tailored to the needs of those populations (MoH, 2017b, p. 45). Other groups identified as being at higher risk for HIV infection include prisoners, sex workers and their clients, people injecting drugs, seafarers and migrants (MoH, 2018b). The policy highlights prevention activities for dealing with substance abuse, including research on the demographics and number of individuals who are substance abusers. The policy also acknowledges the health and access needs for people already living with the virus, and for another at-risk population, prison inmates. Activities such as regular screening, testing and counselling, access to treatment and information are suggested in the policy as critical to addressing the health needs of the prison population.

The STI policies may need to strengthen age specific interventions so older populations are included in the detection and prevention cases. Multi-sectoral and comprehensive, data- driven responses are required to address increasing rates of chlamydia.

While HIV guidelines require health providers to protect the confidentiality and privacy of their clients and subscribe to a code of ethics, vulnerable populations are often reluctant to present for fear of being identified and it is challenging in close-knit populations to guarantee complete confidentiality. Discriminatory attitudes towards people living with HIV are high. The Ministry of Health's Global AIDS Monitoring report for 2018 draws on the findings from the 2014 Demographic Health Survey that show 'only 2.6% of women and 3.3% of men expressed acceptance of people living with HIV or AIDS' (2018a, p. 9).

The Labour and Employment Relations Act 2013 s 20 explicitly prohibits direct and indirect discrimination against an employee or applicant for employment in any employment policies, procedure or practice on the basis of one or more arbitrary grounds including real or perceived HIV status. However, there is no constitutional protection against discrimination on the grounds of HIV status in Samoa.

4.3.2. HPV and cervical cancer

Approximately 10 new cervical cancer cases are diagnosed annually in Samoa (ICO/IARC, 2018). For Samoan women aged 15-44, cervical cancer is the third most common form of cancer (Bruni et al., 2019, p. 6), and it is the cause of six deaths every year (Ibid., p. 14). The Cancer Society in Samoa has been running educational and promotional programmes about cervical cancer, however many women only present in the late stages of cervical cancer. When administered to girls between 9-13 years old, the cost-effective HPV Vaccine is highly effective in reducing the incidence of cervical cancer (Tabrizi et al., 2011). Not providing the vaccine has ramifications in terms of morbidity and mortality of cervical cancer in women of reproductive age and further creates an economic burden on countries' health systems through the high costs of cancer care (UNFPA, 19).

To date, Samoa has not had a national cervical cancer screening programme. However, the National Sector Plan 2008-2018 established an objective 'to develop and implement a national pap smear screening program' (Bruni et al., 2019, p. 55). Building on this, the latest *National SRH Policy 2018-23* incorporates a National Cervical Cancer Screening Program identified as one of the Key Outcomes in the Strategic Plan of Action (MoH, 2018f). Under the same Policy and against the outcome 'Adolescent health improved', is the indicator 'Female adolescents (aged 13-15) who have had three doses of the HPV vaccine' (MoH, 2018f, p23). There is no specific proportion of population coverage target for HPV vaccination specified.

The *Infants Amendment Act 2019 s* 12A broadly mandates that (1) a parent or a person having the custody of a child must comply with the vaccination and immunisation requirements of the Ministry of Health in respect of the child, including but not limited to vaccination and immunisation requirements for infectious diseases such as measles, mumps and rubella.

The HPV vaccine is reportedly included on the National Immunisation Schedule with the draft Expanded Program on Immunisation (EPI) Policy however Gardasil is not included on the *Samoa Essential Medicines List 2019*.

4.4. Maternal health

4.4.1. Antenatal and maternal health care

There are no specific Constitutional or legislative provisions enshrining the right to health or health care generally nor in relation to maternal and newborn care specifically.

The *Ministry of Health Act 2006* sch 2 s 1.5 stipulates that it is the responsibility of the Ministry of Health to provide c) Health Preventive Services, including (i) Health Education; (vii) Reproductive Health; (d) Health Services Performance, including (i) Medical Services; (iii) Pharmacy Services; (v) Nursing Services; (vi)

Midwife Services; and (Vii) Traditional Healing and Birth Attendant Services.

Maternal and child health is a key area of focus for the Ministry of Health in Samoa. Infant, child and maternal mortality rates had been steadily decreasing in Samoa. The Infant Mortality Ratio (expressed as the ratio of live birth children per 1,000 live births who die before reaching their first birthday) for Samoa declined from 20.4 in 2006 to 14.3 in 2016 (SBS, 2020b). The under 5 mortality ratio declined from 22.8 in 2006 to 17 in 2016 (SBS, 2020b). Both fall short of the targets of 50% reduction (10/1,000 and 12/1,000 respectively) set in the previous Health Sector Plan (MoH, 2020a). The maternal mortality rate (MMR) has also failed to meet the previous Health Sector Plan target of 23 per 100,000 live births with census data showing an increase in maternal mortality from 40.2 to 51 per 100,000 live births between 2011 and 2016 (MoH, 2020a). It would be worthwhile conducting further research to understand trends in the maternal mortality rate in Samoa and considering changing the indicator used in relation to maternal mortality from MMR to monitoring the absolute number of deaths annually, to enhance the ability to track change over time.

The previous Health Sector Plan sets a target of 95 per cent of births attended by a skilled health professional (doctor, midwife, reproductive health nurse). In 2014, DHS data indicated there was 83 per cent of skilled attendance at birth (MoH, 2020a). Antenatal care was also a key focus of the previous health sector plan however, only 13.2% of women accessed care in their first trimester in 2009, according to the 2015 Sexual and Reproductive Health Rights Needs Assessment (UNFPA, 2016).

Maternal and child health is identified as one of the key outcome areas in the new Samoa Health Sector Plan 2019-2029, with a strategic goal 'to reduce maternal and perinatal mortality, and to reduce child morbidity and mortality' (MoH, 2020a, p. 30). This is highlighted as particularly important due to the failure to meet targets for the infant and maternal mortality rates under the previous health sector plan. Notably, maternal and child health only makes up 0.05% of total Government financing in the indicative financing framework of the Health Sector Plan.

The National SRH Policy 2018-23 outlines 'safe motherhood' as a central component of reproductive health services, specifically:

1. Family planning – to ensure that individuals and couples have the information and services to plan timing, number and spacing of pregnancies (discussed in previous section of this review)
2. Antenatal care - to prevent complications where possible and ensure that complications of pregnancy are detected early and treated appropriately.
3. Clean/safe delivery – to ensure that all birth attendants have knowledge, skills and equipment to perform a clean and safe delivery and provide care to mother and baby.
4. Essential obstetric care – to ensure that essential care for high risk pregnancies is mad available to all women who need it and complications are dealt with appropriately and referred in a timely manner (p. 9-10)

The SRH Policy has set targets to reduce maternal mortality through the introduction of an essential package of interventions for care during labour and delivery (this includes 100% of births attended by skilled personnel and strengthened emergency referrals) (MoH, 2018f).

The Samoa Essential Medicines List includes 10 of the 11 commodities listed by the UN Commission into Life Saving Commodities for maternal, newborn and child health, including oxytocin, misoprostol, magnesium sulphate, injectable penicillin, dexamethasone and betamethasone (antenatal corticosteroid) and chlorhexidine. However, newborn resuscitation devices are not included on the Essential Medicines List. Reproductive health commodities were discussed under Section 4.2.

A Health Facility Readiness and Service Availability (HFRSA) Assessment conducted in 2018 in Samoa found that only 8 out of 14 facilities (57 per cent) audited could be considered as antenatal and postnatal service

ready; only 1 out of 10 facilities (10 per cent) providing delivery services were ready to provide for vaginal deliveries, only 1 out of 10 facilities (10 per cent) providing deliveries had safe delivery practices in line with international standards and 0 per cent of facilities provided basic emergency obstetric and new born care (UNFPA, 2018). This reinforces the need for evidence based planning and sound monitoring frameworks to adequately address service and commodity supply gaps and meet maternal health needs.

4.4.2. Parental leave

Under the *Public Service Commission's Working Conditions and Entitlements Policy,* female public servants get 26 weeks of maternity leave (12 at full pay and 14 without pay). There is flexibility in how that leave is used in a 12-month period. Male public servants get five paid days of paternity leave annually. Under the *Labour and Employment Relations Act 2013,* private sector female employees are entitled to four weeks of maternity leave with full pay and two weeks of unpaid leave or six weeks on 2/3 of an employee's normal pay. There is also an entitlement for men of a minimum of five days of paternity leave. Under the latter act, it is not legal for an employer to terminate employment during or following pregnancy (this explicit provision does not exist in the public service policy). Baby feeding breaks are available for private sector employees and in the public sector, employees are entitled to a space to breastfeed in private. There is currently no legislation for workplaces to accommodate breastfeeding.

Public sector female employees also have flexible arrangements for taking children to and from school and leave entitlements for stillborn babies, miscarriages and legal adoption of newborn babies and those up to 12 months (SLRC, 2016, p. 86). Despite these provisions, there is no legislation guaranteeing or regulating childcare services for children between 0-5 years old in either the public or private sector.

The Samoan Law Reform Commission (2016) has called on the Samoan Government to align maternity leave provisions in both the private and public sectors and increase entitlements to 14 weeks of paid leave to in line with the CEDAW Committee's recommendations. Paternity leave provisions also need to be reviewed so that parental leave can be taken by either party or shared to encourage greater sharing of caring and domestic tasks.

It should be noted that these provisions are not available to men and women working in Samoa's informal sector.

4.4.3. Abortion

Under the *Crimes Act 2013* (ss 111-115) abortion is illegal unless it is performed to preserve the mother's life, physical or mental health and the pregnancy is not more than 20 weeks gestation. The *Crimes Act 2013* restricts both the provision of, and access to, abortion. In cases of rape, incest and severe foetal impairment, the woman or girl is required to carry the foetus to term unless a medical practitioner believes that continuance of the pregnancy would result in serious danger (not being danger normally attendant upon childbirth) to the life, physical or mental health of the women or girl (s 116(b)). Anyone procuring a miscarriage or assisting to procure one is liable for a prison sentence of up to seven years (s 113).

Data on abortion prevalence, reasons and outcomes are very limited in Samoa. The Samoan Law Reform Commission argue that the current law is 'consistent with the obligations under CEDAW' (SLRC, 2016, p. 52). While there is concern that 'prohibiting abortion in cases of rape, incest or other unwanted pregnancies may lead some women to seek unsafe, illegal abortions', this concern 'does not on its own warrant expanding the exceptions for abortion' (SLRC, p. 52). The Samoa Law Reform Commission (2016) is of the view that the current abortion laws do not require any legislative amendments. Notwithstanding this, the Samoa Law Reform Commission do acknowledge the dearth of available data and the need for stronger data collection to be able to consider the issue further.

In its submission on Young People's Sexual and Reproductive Health and Rights in Samoa to the Universal Periodic Review, the Samoa Family Health Association (SFHA) (2015) suggests the government review its restrictions and barriers on safe abortion services for all women and girls. They argue that 'complications from unsafe abortions include cervical tears, retained pregnancy tissue, severe heavy bleeding and bladder and bowel damage' (p. 5), all of which could result in maternal deaths without appropriate healthcare. They report that in 2014, 36 women sought abortions with SFHA and likely many more went unreported (SFHA, 2015).

A line of enquiry is what constitutes an 'unlawful' vs 'lawful' abortion in Samoa and how the law is interpreted in practice. There is a brief analysis of case law explored in the *National HIV, AIDS, and STI Policy 2017-2022* which establishes some precedence for a broader application of ascertaining 'risk' of serious danger to the mother's life, physical or mental health. What is clear is that the legal status of abortion in Samoa, and a lack of guidance on its interpretation, is impacting on integration (or lack thereof) of safe abortion practices into health policy and comprehensive essential SRH services, even to the extent that it is permissible under the law.

There is no legislative provision guaranteeing access to post abortion care in Samoa. The *National Sexual and Reproductive Health Policy 2018-2023* does include an indicator: 'Proportion of health facilitates that provide postpartum, post abortion and/ or HIV services' (MoH, 2018f, p. 21). However, there is no provision for safe abortion services and post abortion care in the National SRH Policy and action plan. At the time of writing, the authors are not aware of any clinical guidelines on management of safe abortion and post abortion care. A 2018 Health Facility Readiness and Service Availability Assessment found that only two (14%) out of 14 facilities in Samoa provides 'post-miscarriage' services (UNFPA, 2018).

At minimum there needs to be a guideline in place for the provision of safe abortion and post abortion care to the full extent of the law (including facility readiness, risk assessment, counselling, referral, obligations and rights).

Further research and data collection on abortion is required in Samoa to inform any future dialogue about law reform. Research has found that unsafe abortion contributed to 30 maternal deaths per 100,000 live births in Oceania (excluding Australia and New Zealand) in 2008 (Åhman & Shah, 2011). Åhman and Shah (2011, p.121) state that "death attributable to unsafe abortion can be prevented by effective contraception, safe abortion services, and post abortion services". Research has also indicated that there is an association between higher maternal mortality rates, unsafe abortion and restrictive abortion laws (Sedgh et al., 2016). Further, Ganatra et al. (2017) found that when grouped by legal status of abortion, the proportion of unsafe abortions was significantly higher in countries with highly restrictive abortion laws and analysis showed a positive association between safe abortions and less restrictive laws.

4.5. Comprehensive sexuality education

The *Education Act 2009* provides the legal framework for the delivery of education in Samoa. It was amended in 2019 increasing the compulsory age range of education for boys and girls in Samoa from 5-14 years-old to 4-16 years-old. The Act outlines the process for approving curricula but does not legislate curriculum content. It requires principles and school management authorities to provide a productive and safe learning environment for all. There is currently no provision in the *Education Act 2009* nor in other national legislation mandating integration of comprehensive sexuality education (CSE) into the national curriculum.

Samoa is subject to international obligations to provide SRH education. The Convention on the Rights of the Child (CRC) states that State parties are required to 'develop…family planning education and services' for all children under 18 years of age (art 24(2)(f)). However, a review by the CRC committee found that reproductive health education was not adequately incorporated into the national curriculum (CRC committee, 2006).

The Samoa National Curriculum includes provision for developing an informed understanding of the issues associated with gender as 'an essential skill' to be developed across the curriculum however it does not establish CSE as a core component of the curriculum to be delivered across all schools in Samoa. Reproductive Education is taught through Health and Physical Education (HPE); however, this is delivered ad-hoc and does not reach all schools (OHCHR, 2018). The HRC Working Group report on 'discrimination against women in law and practice' noted that teachers 'are not at ease' delivering sexual and reproductive health education (OHCHR, 2018, p.15). There is strong stigma around pre-marital sex and use of SRH services in adolescents linked to religious beliefs and social norms in Samoa (SBS, 2020c). This creates both a barrier to uptake of CSE in school settings as well as a deterrent to adolescents and youth accessing SRH information and services.

The *National Safe Schools Policy* (2017) contains provisions to protect pregnant girls from school dropout however does not fully address issues around gender inequality and promoting safe and healthy relationships. Due to those reasons, the HRC Working Group (2018) described this policy as a missed opportunity, also noting that there seemed to be limited awareness of the existence of the policy at a school level (OHCHR, 2018).

In its 2016 submission to Samoa's Universal Periodic Review, the SFHA (2016, p. 3) highlighted that 'unmarried girls who become pregnant continue to be threatened with expulsion and married adolescent girls continue to leave school'. There are no alternative arrangements for these young girls to continue their education outside of the school setting.

The Samoa Family Health Association (2016, p. 3) further states that the sex education curriculum needs to include more than 'human reproductive functions' and 'promotion of family, moral and religious values'. Young Samoans, they argue, need access to CSE that will protect them from unintended pregnancies and sexually transmitted infections. The SFHA recommends the Samoan government review the current policy on SRH to include CSE in the school curriculum and make educational opportunities available for young girls who get pregnant while at school.

In 2019, the SFHA submitted a commitment to the ICPD +25 Nairobi summit on behalf of Samoa, as follows:

> We will provide 40 thousand young people in Samoa with comprehensive sexuality education (CSE), in and out of schools, through evidence-based approaches including innovative and digital ones. We will influence the government of Samoa to establish or revised policy initiatives and/or legislative changes to include CSE into curricular of formal education programs or programs for out-of-school adolescents. We work in partnership with other agencies to establish a youth friendly centre for youth centred programming and CSE and to build local capacity to deliver high quality integrated gender and rights based comprehensive sexuality education (Samoa, 2019, para 1).

There seems to be a renewed focus at a National level to strengthen comprehensive sexuality education. There are now multiple cross sector policies that have committed to strengthening CSE, both in and out of school, in Samoa.

The *National SRH policy 2018-23* does not specifically incorporate comprehensive sexuality education in schools but does include a broad output around comprehensive sexual health and rights information and counselling for adolescents and coverage of SRH messages in mass media (MoH, 2018f).

The *2017-2022 National HIV, AIDS, and STI Policy* explicitly aims to promote health information on AIDS, STIs and sexual health in primary and secondary school curricula, as well as making health education available to young people who are not in the school system

National Policy on Gender Equality and Rights of Women and Girls 2021-2031 outlines specific targets to:

- **3.4.** Incorporate school and tertiary curriculum with topics of life skills, GBV, SRH, food security & nutrition and human rights. (p14)
  - Develop and incorporate culturally-appropriate curriculum on life skills, gender-based violence, sexual health, food security and nutrition, and human rights. The curriculum should support discussion of beliefs regarding gender norms and gender relations, respectful relationships, consent, informed decision-making and the distribution of labour within households.
  - Ensure the inclusion in school curricula of mandatory, universal, age-appropriate, comprehensive sexuality and reproductive health and rights education addressing the issues of power and responsible sexual behaviour, with special attention given to the prevention of early pregnancy, and strengthen continuing efforts towards awareness-raising in order to change cultural resistance to sexual and reproductive health education;
  - Include human rights and gender studies in teacher training curricula to ensure the elimination of all discriminatory gender stereotypes against women and girls;

- **3.5.** Safe school policy is strengthened and monitored (p14)
  - Enforce the implementation of the national safe schools' policy to ensure that pregnant girls and young mothers continue their education and take appropriate measures to eliminate negative attitudes towards them, including through continuous awareness-raising programmes.

In December 2020 the Spotlight Initiative[6] in partnership with the International Planned Parenthood Federation (IPPF), supported the regional launch of the 2020 International Technical and Programmatic Guidance on Out-of-School Comprehensive Sexuality Education (Guidelines) (UNFPA, 2020). The keynote address was given by the Prime Minister of Samoa and was attended by Pacific government leaders, raising awareness on the need for CSE for young people and informing national strategies to implement CSE for out-of-school youth.

Incorporating culture (fa'a-Samoa) and religion (lotu) into sexual health policies has been an ongoing challenge. Involving the church in comprehensive sexual education and the observance of village customs while adhering to the international public health practices and protocols has been complex (MoH, 2017b). Most faith denominations in Samoa advocate for pre-marital abstinence which means that young people's access to a comprehensive and rights-based sexuality education, SRHR and contraception is impacted by religious values and norms (SFHA, 2015, p. 2). There are currently no targeted SRHR engagement and training for faith communities, leaders and theological institutions in key SRH related policies.

There is limited research into the attitudes of teachers on delivery of CSE content in schools nor on perceptions of adolescents and youth on accessibility of SRH information and the way it is delivered within schools in Samoa. Undertaking qualitative research would be beneficial to inform resource development, including teacher training, for in-school CSE. Further, a strengthened mandate for CSE integration into the national curriculum would provide greater accountability and consistency in its delivery within both public and independent schools.

6 The Spotlight Initiative is a global partnership between the European Union and the UN to end violence against women and girls through 5 pillars: Laws and policies, Institutions, Prevention, Services, Data and Women's Movements. The Samoa spotlight country program is working across all pillars including a planned in-depth review of GBV legislation.

5 Gender-based violence in law and policy

This section of the report follows the same structure as Section 4. Key national policy documents will be outlined, highlighting their relevance to GBV. Policies along with relevant legislation will then be explored further, according to key GBV domains developed for this review.

5.1. Background

There have been several national violence against women (VAW) prevalence surveys completed in Samoa. The timing and differing methodology make it somewhat challenging to identify trends between the surveys or the impact of various legal, policy or program measures, however all have revealed alarmingly high rates of VAW in Samoa. In 2000, the Samoa Family Health and Safety Study (SFHSS) found that 46 per cent of ever partnered women aged 15-49 years had experienced intimate partner physical and/or sexual violence at least once in their lifetime (Pacific Community, 2006). Further, the study found that 22 per cent of ever partnered women aged 15-49 years had experienced intimate partner physical and or sexual violence in the last 12 months. Of the women surveyed who had experienced intimate partner violence, 54 per cent had never disclosed intimate partner violence prior the survey (ibid). The findings suggested that women were reluctant to seek help because violence was normalised and many of the women considered religious and traditional cultural influences impacting their decision to remain in the relationship (Ibid). The SFHSS also found that 11 per cent of women aged 15-49 years experienced sexual violence perpetrated by someone other than an intimate partner since the age of 15 (Pacific Community, 2006). Further, 8.1 per cent of women aged 15-49 years reported that their first sexual experience was forced.

The SFHSS was conducted again in 2017 using slightly different methodology, including a narrower age range (20-49 years). This survey found that 60 per cent of women reported that they had experienced physical or sexual intimate partner violence in their lifetime and 46 per cent in the last 12 months (MWCSD, 2017).

Most recently in 2019 the Samoa Demographic Health Survey (DHS) Multi-Indicator Cluster Survey (MICS) found that 52.3 per cent of women (15-49) had experienced physical violence by their intimate partner in their lifetime; and 18.7 per cent of women (15-49) had experienced physical violence by their intimate partner the past 12 months (SBS, 2020a). Sexual violence by any perpetrator was reported by 21.7 per cent of women in their lifetime; and 12.6 per cent in the past 12 months. The latest DHS-MICS survey also highlights the very high rates of non-intimate partner violence in Samoa perpetrated by a father/ stepfather or mother/step mother. The survey found that 90.8 percent of children aged 1-14 years experienced physical punishment and/or psychological aggression by caregivers in the past month (SBS, 2020a).

Definitions of violence are linked to gender roles with many men and women believing that 'violence is acceptable under certain circumstances' (Boodoosingh et al., 2018, p. 39). Some women may believe they have not fulfilled their roles as wives or studied the teachings of the scriptures; men may see some forms of abuse as disciplining their wives and only the most physical act is considered to be family violence (ibid).

Consultations conducted by the Samoa Law Reform Commission illustrated that in some cases Samoan's believe that fa'a-Samoa allows husbands to beat their wives in certain circumstances and that human rights are foreign impositions (SLRC, 2016). The 2018 State of Human Rights Report specifically recommends addressing 'misconceptions around the fa'a-Samoa which further gender inequality and contribute to family violence and identify and implement ways in which it can prevent and protect against family violence' (National Human Rights Institution, 2018, p. 46). Addressing misconceptions and identifying how fa'a-Samoa can be used together with anti-violence messages will be particularly important with the renewed focus on fa'a-Samoa for strengthening primary health care and SRHR.

There is minimal data available on gender-based violence in marginalised groups who face multiple intersecting forms of disadvantage and discrimination including nofotane[7] women, people with disabilities, people of diverse sexuality or gender, fa'afafine[8], fa'afatama and sex workers.

Available data reinforce that preventing and responding to GBV (that is violence that is enacted on the basis of gender, most commonly men's violence against women) is an urgent priority for Samoa along with high rates of violence against children. Current policy and legislation in some cases adequately reflects this need, however there remain some significant gaps which need to be further explored.

A National Public Inquiry into Family Violence (NIFV) in Samoa was launched in December 2016 by Prime Minister Tuila'epa Sa'ilele Malielegaoi with Samoa's ombudsman, Maiava Iulai Toma, who also heads the National Human Rights Institution (NHRI). The Public Inquiry (NIFV) outlined 39 recommendations, focused on preventing gender-based violence against women and girls at the national level (including legislative reforms and strengthening policy and governance) through to targeted interventions within families, villages and churches. Some of the key gaps and barriers identified in this review reinforce the need to follow up and action the recommendations of the NIFV as a matter of priority.

7 Samoan indigenous women who marry outside their home village and live in their husband's village, are called "nofotane" (translates to 'stay or live with husband')

8 Third and fourth genders of fa'afafine and fa'afatama have always existed within Samoan society. When translated literally, they mean "in the manner of women" (fa'a fafine) and "in the manner of man" (fa'a fatama)

5.2. Domestic legislation and policy

Samoa has made notable progress in recent years in addressing family violence, particularly through legislative reform. This includes the introduction of the *Family Safety Act 2013* and the *Crimes Act 2013.* In the past 12 months, Samoa has also launched a number of key policies including Samoa's first *National Policy on Family Safety – Elimination of Family Violence 2021-2031*. While this doesn't cover all forms of GBV, linking with other key policies it provides an opportunity to develop a more comprehensive national strategy to address GBV. Key laws and policies that are relevant to the prevention and response of GBV in Samoa are summarised below.

Table 7: Domestic legislation and policies relating to GBV in Samoa

Legislation	
Divorce and Matrimonial Causes Ordinance 1961	
Child Care and Protection Bill 2013	
Crimes Act 2013 and Crimes Amendment Act 2017	
Family Safety Act 2013	
Evidence Act 2015	
Criminal Procedure Act 2016	
Village Fono Act 1990 and Village Fono Amendment Act 2017	
Sex Offenders Registration Act 2017	
Labour and Employment Relations Act 2013	
Marriage Ordinance Act 1961	
Community Justice Act 2008	
Lead ministry	**Policies and guidelines**
Ministry of Finance	Strategy for the Development of Samoa 2016-2020 (Due for Review)
	Samoa Population Action Plan 2017-2021
Ministry of Women, Community and Social Development	National Policy on Family Safety – Elimination of Family Violence 2021-2031
	National Policy on Gender Equality and Rights of Women and Girls 2021-2031
	Samoa Inter-Agency Essential Services Guide for Responding to Gender-based Violence and Child Protection (2021)
	Community Development Sector Plan 2021-2026
	National Child Care and Protection Policy 2020-2030
	MWCSD Strategic Plan 2021-2026
	National Policy for Persons with Disability 2021-2031
Ministry of Justice, Courts and Administration	Law and Justice Sector Plan 2021-2025
Ministry of Health	Health Sector Plan 2019-2029
	National Sexual and Reproductive Health Policy 2018-2023
	National HIV, AIDS & STI Policy 2017-2022
	Standard Operating Procedures for Clinical Management of Rape, Sexual Violence and Gender-based Violence 2021

5.2.1. Women, Community and Social Development Sector Policy

National Policy on Family Safety – Elimination of Family Violence 2021-2031

The Ministry of Women Community and Social Development has recently launched the *National Policy on Family Safety*.

This is the first standalone national policy addressing the most prevalent form of gender-based violence in Samoa, family violence. It should be noted that while it does provide scope to address other forms of GBV (particularly through a strong focus on prevention), it does not comprehensively include *all forms* of GBV, namely non-partner sexual violence and harassment, trafficking and sexual exploitation, child marriage, violence against vulnerable groups (including LGBTIQ) as well as GBV in emergencies.

This important policy is informed by a multi-sectoral approach recognising the coordinated effort required to address this issue at a national through to a community level. Governance of the policy will be carried out by the Community Development Sector Steering Committee within the Ministry of Women, Community and Social Development. Five outcome areas are identified:

- **Outcome area 1:** Reduced violence against women and children, persons with disabilities, elderly as well as other vulnerable populations.
- **Outcome area 2:** Communities to lead the response, prevention and awareness against family violence.
- **Outcome area 3:** A coordinated and efficient interagency response framework that is survivor centered and simple for workers and survivors to navigate.
- **Outcome area 4:** Relevant laws in place to punish perpetrators of family violence, and that these laws are enforced by all key agencies.

To achieve the policy outcomes the Strategic Framework was developed, consisting of 1-Prevention, 2-Early Intervention and 3-Response. These three strategic areas will guide all the work of the outcome statements.

The policy will be 'operationalised through a rolling ten-year Action Plan that will be reviewed annually and updated where appropriate' (p. 14). The implementation plan embedded in the policy outlines objectives, activities and indicators against the 4 outcome areas, however the implementation plan is not costed. It is vital that this plan is adequately resourced to ensure high level targets can be achieved including strengthening key coordinating mechanisms within the Ministry of Women, Community and Social Development and the Ending Violence Against Women (EVAW) Taskforce.

The policy provides a high-level summary of the partnership 'spheres of influence' to implement a national multi-sector approach. It is not clear the extent to which these stakeholders were engaged in developing the implementation plan. The policy does not provide a detailed outline of the way in which stakeholders will work together across the different tiers of prevention, early intervention and response, however does refer directly to the *Inter-Agency Essential Services Guide (IESG) to Gender-Based Violence and Child Protection (2021),* see below. One of the targets under the National Policy on Family Safety is for all response agencies to develop standard operating procedures ((SOPs). This will be vitally important as well as ensuring that SOPs align with the broader IESG.

The policy also recognises that the framework (Prevention, Early Intervention and Response) cannot be implemented without cementing and strengthening a formal relationship between government and non-government agencies and service providers, churches and village councils.

There are some broad objectives around building the capacity of frontline workers and responders as well as strengthening data collection however the policy does not outline a framework for managing training and

minimum training requirements across the sector, nor a mechanism for data sharing or coordinated case and risk management.

Samoa Inter-Agency Essential Services Guide to Gender-Based Violence and Child Protection (2021)

A comprehensive inter-agency approach to GBV is emergent in Samoa. To date services across sectors have not been particularly comprehensive or coordinated and different sectors like health have tended to work within their own mandates. The Interagency Services Guide (IESG) to Gender-Based Violence and Child Protection (2021) were recently launched by Ministry of Women, Community and Social Development with technical support from UN Women, UNICEF and UNFPA. The guidelines are aligned with the United Nations Joint Global Programme on Essential Services for Women and Girls Subject to Violence, a partnership by UN Women, UNFPA, WHO, UNDP and UNODC.

- These guidelines are an important companion resource to the National Policy on Family Safety and in fact form the framework for Outcome Area 3.
- The IESG focuses on how agencies work together to support victim-survivors. It encompasses:
- best practices on survivor-centred approach to service delivery;
- guiding principles and specific approaches for safely, ethically and adequately responding to cases of GBV;
- agreed national and community referral pathways for responding to GBV survivors;
- the key roles and responsibilities of multisectoral service providers, including health and social services, the police, the court system and legal aid – this includes the responsibility for service delivery coordination and governance;

The IESG provides only a high-level summary of the roles and responsibilities of key GBV service providers and does not require a commitment from them to provide minimum services or adhere to guidelines. This being the case, it will be vitally important to develop a formal shared agreement between agencies and service providers, establishing obligations and expectations and formalising the referral system. Further, as discussed SoPs will need to be developed for each sector (health, police, justice, education, specialist family violence services) and link to each other and align with the broader IESG.

At the time of writing, a *Standard Operating Procedures for Clinical Management of Rape Sexual Violence and Gender-based Violence* (MoH, 2020b) was validated and launched. This draws from the WHO's 2019 training curriculum that uses the recommendations from the WHO Clinical handbook: Healthcare for women subjected to intimate partner violence or sexual violence. This Standard Operating Procedure (SOP) presents clear procedures, roles, and responsibilities for healthcare providers in primary, secondary and tertiary level healthcare facilities in Samoa.

National Policy on Gender Equality and Rights of Women and Girls 2021-2031

As discussed under Section 4 of this report, the new National Policy on Gender Equality promotes a gender transformative approach and includes key policy targets that directly answer recommendations out of the CEDAW committee's concluding observations on the sixth periodic report of Samoa (CEDAW Committee, 2018), as well as aligning with the Convention of the Rights of the Child (CRC), the Convention of the Rights of Persons with Disabilities (CRPD) and SDG Agenda.

Targets under this policy complement the *National Family Safety Policy,* as they build on and go beyond family violence to capture other forms of GBV. In fact, most of the targets under this policy are either directly or indirectly relevant to addressing GBV, as they seek to address the drivers of gender inequality.

Of particular relevance are the targets under 'Priority Area 5: Access to Law and Justice'. This section commits to expedite the implementation of recommendations out of the NIFV, review and strengthen GBV

policy and legislation, conduct research on the drivers and costs of GBV, strengthen mechanisms for data collection, provide targeted training for police and judiciary and strengthen access to justice. There are also specific commitments to addressing transnational crime, trafficking, and exploitation of Prostitution.

As noted earlier, the *National Policy on Gender Equality and Rights of Women and Girls* does not currently have an associated action plan or budget and the Ministry of Women, Community and Social Development indicated that M&E for this policy may be consolidated with the Community Development Sector Plan. Concerningly, despite the Ministry of Women, Community and Social Development's mandate to lead gender transformative planning, budgeting and policy processes across government departments as well as lead the implementation of the National Policy on Gender Equality, lack of resources compounded by the restructure of the Ministry has meant that they currently do not have gender specialists available within the Ministry. The Ministry of Women, Community and Social Development state 'It is critical that specialist knowledge and expertise in gender equality be mobilized to support the Ministry of Women, Community and Social Development in its leadership and coordinating role for this Policy to ensure implementation, monitoring and evaluation processes are robust' (p. 27).

National Child Care and Protection Policy 2020-2030

This National Child Care and Protection Policy sets a strategic and high-level direction for child protection and strengthening the family and community structures that are already in place to care and protect children in Samoa. The overarching Policy goal is 'To create an environment where children are safe and protected from all forms of abuse, exploitation, neglect and violence, and have equitable access to services to support their reintegration and recovery when needed (MWCSD, 2020, p. 4) The Policy is accompanied by a strategic 10-year Action Plan and Framework that outlines six outcomes statements:

- **Outcome 1:** Parents, families, and communities are better able to prevent abuse, intervene early and respond to children at risk in Samoa;
- **Outcome 2:** Children in need of protection and their families have improved access to child care and protection services;
- **Outcome 3:** Schools are safe and protective and respond appropriately to child protection issues;
- **Outcome 4:** Health workers are better able to prevent and respond to violence, abuse, neglect and exploitation of children;
- **Outcome 5:** Children have access to child-sensitive justice; and
- **Outcome 6:** Child protection integrated into disaster risk management and response (p. 16)

Each outcome area outlines specific outputs, activities, responsible stakeholders and timeframe for implementation. Governance of the policy is formalised through a National Committee to be appointed by cabinet and supported by a Child Care and Protection Working Group (CCPWG), chaired by the Ministry of Women, Community and Social Development.

The operationalisation of this policy is particularly important given the absence of a comprehensive legislative framework for the protection of children as will be discussed below. A critical companion resource to this policy is the IESG and child protection response has been included in the Ministry of Health Standard Operating Procedures for Clinical Management of Rape Sexual Violence and Gender-based Violence.

Community Development Sector Plan 2021-2024 & Law and Justice Sector Plan 2021 - 2024

As discussed, this sits under and feeds into the Strategy for the Development of Samoa. The CDSP maps national policy and strategy documents and outcomes directly linked to the Community Development Sector. The key outcomes identified in all of the Ministry of Women, Community and Social Development policies summarised above are picked up in the CDSP.

Many of the cross-sector outcome statements specific to GBV were related to ensuring there is a well-researched legal and regulatory framework, including access to and use of legal services for the most vulnerable. This picks up key targets under the *Law and Justice Sector Plan* launched this year (2021) feeding up into 'Key Priority 8 — Community Safety' in the Strategy for Development of Samoa.

Table 8: GBV relevant CDSP targets and indicators

End of sector plan outcome	CDSP intermediate target
3.1 Ending violence in the family and especially against women against women	Reduced violence women and children, persons with disabilities, elderly abuse as well as other vulnerable populations
	Communities to lead the response, prevention and awareness against family violence
	A coordinated and efficient interagency response framework that is survivor centered and simple for workers and victims to navigate
	Relevant laws in place to punish perpetrators of family violence, and that these laws are enforced by all key agencies
	Appropriate services are provided for survivors of violence
	Increased and improved access to law and justice for women and girls especially those facing multiple and intersecting barriers and forms of discrimination
	Strengthening laws, policies and plans to address GBV
	Improving knowledge, understanding and awareness
3.2 Child care and protection	End abuse, exploitation, trafficking and all forms of violence against and torture of children
	Policies & legislation is in place for the care and protection of all children in Samoa
	Ensure adequate research and data is available to make informed decisions
	Parents, families, and communities are better able to prevent abuse, intervene early and respond to children at risk in Samoa
	Children in need of protection and their families have improved access to child care and protection services
	Schools are safe and protective and respond appropriately to child protection issues
	Health workers are better able to prevent and respond to violence, abuse, neglect and exploitation of children
	Children have access to child-sensitive justice
	Child protection integrated into disaster risk management and response
	Strengthen adoption legislation and conduct awareness programs on adoptions laws, policies and procedures to protect the child
	Address child labour
	Protect and promote the rights of children and youth
	Ensuring adoption processes and practices are always for best interest of the child
	Ratify the 3 optional protocols to the CRC

End of sector plan outcome	CDSP intermediate target
3.4 Improved education outcomes	Human Rights awareness and education
	Improving education quality for women and girls, especially those facing multiple and intersecting barriers and forms of discrimination
	Schools to be safe spaces for learning
	Increasing public education, awareness and tackling of stereotypes and harmful practices
	Improving knowledge, understanding and awareness on the effects of GBV and family violence
3.5 Improved law and justice for social outcomes	Harmonise laws with CRC
	Strengthening laws, policies and plans to address GBV
	Access to justice for vulnerable groups especially women and girls with intersecting barriers
	Protection of gender identity & sexual orientation legislation and regulation
	Identify and address human trafficking
	International obligations Ratify outstanding HR Treaties
	Strengthening laws and policies to support gender balanced governance, leadership and decision-making
	Strengthen family safety and EVAW legislation and regulations

Source: CDSP 2021-2026

As discussed earlier, the CDSP outlines a 'Medium Term (5 year) Expenditure Framework' that itemises projected costs associated with the achievement of targets. The Ministry of Women, Community and Social Development source and allocate funds accordingly. Limited core Government of Samoa funding and a reliance on donor assistance poses a significant risk to the sustainability of work under the Ministry of Women, Community and Social Development and the achievement of outcomes in the CDSP.

5.2.2. Health Sector Policy

National Sexual and Reproductive Health Policy 2018-2023 & National HIV, AIDS and STI Policy 2017-2022

While the previous *National SRH policy 2011-2016* did not specifically include GBV, this updated SRH Policy acknowledges GBV as a fundamental component of SRH. The lessons learnt out of the review of the previous SRH policy include the need to expand the scope of the SRH policy identify what health professionals' roles are in responding to cases such as rape, incest and violence and encompass other sector's and stakeholder's roles for greater ownership in combating matters pertaining to SRH and the need to establish linkage of SRH to gender-based violence (p. 6).

Despite this, there are no specific GBV targets in the current national SRH strategic plan of action.

The *National HIV, AIDS and STI Policy 2017-2022* highlights the importance of addressing the intersection between SRHR and GBV particularly as it pertains to HIV, AIDS and STIs, explaining 'compromising women's social safety, gender-based violence threatens women's capacity to protect their sexual and reproductive health and manage their risk for HIV and STIs' (MoH, 2017b, p. 56). Objective 5 of the policy is to 'Integrate sexual health with services targeting gender-based violence'. It outlines the following strategic actions:

Table 9: Key strategic actions for Objective 5

Objective 5: Integrate sexual health with services targeting gender-based violence
1. Implement health needs and STI risk assessments to formally assess the sexual health service needs of survivors of violence.
2. Target domestic violence as means of increase women's access to sexual reproductive health services, and therefore HIV care, and STI testing and treatment
3. Develop programs for ANC women experiencing domestic violence
4. Coordinate and enhance a violence services referral system within the health sector
5. Partner with village women's committees (Komiti Tumama) to discreetly deliver sexual health services to women and children impacted by violence
6. Develop family counselling curriculum that is designed to support families of paediatric sexual assault cases in consenting to screen and treat the child.
7. Partner with the Ministry of Police to offer voluntary STI screening, counselling and treatment as part of post sexual assault medical services for adult and paediatric cases.
8. Create access to safe abortion for survivors of rape and incest, PLWHIV, and people living with STI's preferably in-country or in partnership with the overseas treatment program (ensure subsidized cost for these populations).

Source: National HIV, AIDS and STI Policy 2017-2022

The HIV, AIDS and STI Policy states that domestic violence had not been formally addressed in the health system and suggested several additional areas of action:

- Develop domestic violence screening mechanisms and competency among healthcare providers
- Research domestic violence's impact on health outcomes in women's health, maternal and child health, and its co-morbidity and risk for HIV and STIs
- Referrals for survivors of violence across all sectors
- The leveraging of health services to intervene and address women's equality (p56).

The policy further indicates that SRH Emergency contraception and HIV and STI post exposure prophylaxis shall be covered by the national healthcare system for all women who report to care following sexual assault within 5 days, with sufficient pharmaceutical stock ensure and stock outs are minimised (p 61). The *National HIV, AIDS and STI Policy 2017-2022* is earmarked for review this year under the current national SRH policy strategic implementation plan.

Concerningly, a Health Facility Readiness and Service Availability (HFRSA) Assessment (UNFPA, 2018) found that 0 out of the 14 facilities audited were considered to be 'GBV service ready'. The assessment looked at factors such as staff training to respond to GBV (only 3 facilities has specifically trained staff); only two facilities had a private counselling room or space for providing sexual assault services but, according to the enumerators, neither offered auditory and visual privacy; and only three also reported providing post-exposure prophylaxis (PEP) to survivors of rape (UNFPA, 2018, p18). As discussed earlier in the report, the HFRSA assessment also found that most facilities audited did not have emergency contraceptives in stock (ibid). The assessment did not cover the ability to collect forensic evidence. The findings of this assessment reinforce the need for standardised and ongoing monitoring and evaluation to ensure that policy commitments are being implemented in practice. Further, it highlights the importance of clear SOPs and accountability mechanisms. The finalised *Standard Operating Procedures for Clinical Management of Rape Sexual Violence and Gender-based Violence* should be rolled out by the Ministry of Health as a matter of urgency.

The remainder of Section 5 explores Samoa's policies and legislation in relation to GBV key domains developed for this review.

5.3. Domestic violence

5.3.1. The Family Safety Act 2013

The *Family Safety Act 2013* was the first legislation to offer protection for families, in particular women and children from domestic violence and sexual abuse in Samoa. Domestic violence is defined in the *Family Safety Act 2013* as a form of violence 'that occurs between people in a "domestic relationship", be it through marriage (legal, customary or de facto), romantic relationships, familial relationships, adoption (legal or customary) or shared residency' (*Family Safety Act 2013 s 2*). The act defines domestic violence as:

- Physical abuse
- Sexual abuse
- Emotional, verbal or psychological abuse
- Intimidation
- Harassment
- Stalking
- Any other controlling or abusive behaviour towards a complainant where such conduct harms, or may cause imminent harm to, the safety, health or wellbeing of the complainant (F*amily Safety Act 2013 s 2*).

Further, the *Family Safety Act 2013* defines "emotional, verbal and psychological abuse" as a pattern of degrading or humiliating conduct towards a complainant, including: (a) repeated insults, ridicule or name calling; (b) repeated threats to cause emotional pain; or (c) the repeated exhibition of obsessive possessiveness or jealousy, which is such as to constitute a serious invasion of the complainant's privacy, liberty, integrity or security. "Harassment" is defined as engaging in a pattern of conduct that induces the fear of harm to a complainant including: (a) repeatedly watching or loitering outside of or near the building or place where the complainant resides, works, carries on business, studies or happens to be; (b) repeatedly making calls or texts by telephone, mobile phone, internet (skype) or by any other technological means, or inducing another person to make calls or texts by telephone or mobile phone to the complainant, whether or not conversation ensues; (c) repeatedly sending, delivering or causing the delivery of radio messages, letters, telegrams, packages, facsimiles, electronic mail or other objects to the complainant (s2). The definition of domestic violence in the *Family Safety Act 2013* does not include financial/ economic violence.

Protection orders

The *Family Safety Act 2013* provides civil remedies for domestic violence, including interim protection orders and protection orders that can include conditions that restrain the alleged offender from committing further domestic violence, and can bar and/or evict alleged perpetrators from households and other property or premises.

The Act has a 'no drop' provision- this requires police officers to respond to all domestic violence reports (s 16). Police officers are required to inform complainants of their rights under the Act (in a language that he or she understands) including the right to lodge a criminal complaint where applicable and assist them to locate accommodation, obtain medical treatment or counselling (s 15).

The Act also stipulates that where a report of domestic violence involves any form of sexual or physical abuse, and provided there is sufficient evidence for doing so, every police officer handling the matter shall:

1. ensure and undertake to do all things necessary in order that a charge or information is laid with the Court in order to commence prosecution of the matter in Court; and

2. not endeavor to withdraw a charge or information laid under paragraph (a) (*Family Safety Act 2013,* s 16)

However, the Act goes on to stipulate 'where a report of domestic violence involves any other form not being physical or sexual, the Police Officer may where the Police Officer considers it appropriate to do so and in accordance with applicable guidelines, have the matter referred to an authorised counselling agency and from there monitor progress of such an arrangement' (s 16).

A complainant or someone acting on behalf of the complainant can apply to the court for a protection order. Under the *Family Safety Act 2013* (s 4), protection orders can only be issued with the written consent of the complainant with the exception of circumstances where the complainant is a child, suffering from mental illness, unconscious or where the Court reasonably decides the complainant is unable to provide consent (s 4(4)). The Act also has provision for an Interim Protection Order where there is sufficient evidence that an act of domestic violence has been committed and 'the complainant is likely to be either physically or sexually assaulted as a result of such domestic violence if a protection order is not issued immediately' (Family Safety Act 2013 s 5). Either the Court shall issue an interim protection order or direct the Registrar or the complainant's legal counsel, to serve the order (s 5). There has been some criticism on the time taken between application and issuance of protection orders, requirement of written consent from the complainant to apply for a protection order and the lack of provision for police to be able to issue a temporary protection order (SLRC, 2016).

Orders are made based on a civil burden of proof, in this case that the court must be satisfied on the balance of probabilities that the respondent has committed or is likely to commit domestic violence against the affected person; and the making of an order is necessary to protect the affected person from domestic violence. A breach of a protection order is an offense under the *Family Safety Act 2013* and carries jail term of no more than a six-months (s 11).

5.3.2. Family law

Family law in Samoa is addressed through:

- Family Court Act 2014
- Marriage Ordinance Act 1961
- Maintenance and Affiliation Act 1967
- Divorce and Matrimonial Causes Ordinance 1961
- Infants Ordinance 1961

The *Family Court Act 2014* established a division known as the Family Violence Court under the District Court. This closed court, presided over by three judges, was set up to adjudicate matters under the Family Safety Act 2013. The Family Court hears matters relating to protection orders, family law matters, divorce cases, adoption, custody and maintenance (Boodoosingh et al., 2018). Part 3 of the *Family Court Act* specifies that 'In any proceedings commenced in the Family Court, the Court must so far as possible, promote conciliation' (s6(1)). Further s 7 - requires parties to engage in alternative dispute resolution, unless the Court is satisfied that there is no reasonable prospect of an agreement being reached. This, combined with police discretion to refer to an authorised counselling agency (in cases other than those criminally liable under physical and sexual offences) without completing a full risk assessment, does not adequately protect victim survivors in situations of domestic violence and further increases their vulnerability and risk.

Importantly, the *Divorce and Matrimonial Causes Ordinance 1961* (s 7(3)) provides that 'a marriage may be broken down irretrievably if the court is satisfied that a party to the marriage is the subject of domestic violence'.

Village Fono

The plural legal system in Samoa where customary laws operate alongside the formal common law, does not, according to Dr Jennifer Corrin, 'form a coherent regime' (Corrin, 2008a, p. 295). In cases of disputes over financial matters in relationships, outcomes are likely to favour men over women, as decision-making at village levels is dominated by men. In cases where marriages are terminated, there is little guidance, according to Corrin, through the Maintenance and Affiliation Act and the Divorce and Matrimonial Causes Ordinance on 'how the amount of maintenance should be awarded' (Corrin, 2008a, p. 304). Customary laws also deny women access to land at the end of a marriage because land is attached to chiefly titles and not owned by individuals. In this instance, the English common law and the customary land ownership practice disadvantage women. Corrin concludes that to honour CEDAW obligations, Samoa needs to update its legislation so 'women are not discriminated against when matrimonial property is divided' (Corrin, 2008a, p. 313). The 2018 concluding observations from the CEDAW committee (2018) in its concluding comments reiterated its recommendation to review and strengthen family laws around equitable division of marriage property and end discriminatory practices around ownership and inheritance of land.

The codification of customary law as a result of the 2016 amendments to the *Village Fono Act 1990* poses both opportunities as well as challenges in relation to gender-based violence, as discussed throughout this review. This amendment expanded the authority of the fono to classify and enforce offences and penalties in the village and impose banishment and curfews. The NIFV identified the important function the *fono* can play in assisting to identify cases of family violence, working in a complementary way with police and assisting to enforce outcomes from the Family Court (OONHRI, 2018). However, as the *fono* is dominated by men (some of whom are also perpetrators of violence), family violence decisions will be influenced by their views on gender equality and norms. The role of the Village Fono in family violence matters needs to be carefully considered, centrally guided by women's and children's rights to protection and justice. Although the Amendment Act invites registration of village by-laws with the Government allowing some review against constitutional, statutory and international commitments, this is voluntary and not a mandatory requirement.

Working with village authorities and establishing village safety committees plays a central focus of the National Policy on *Family Safety – Elimination of Family Violence 2021-2031*. This includes building knowledge and awareness of relevant laws and challenging harmful beliefs and practices. The new National Policy on Gender Equality and Rights of Women and Girls 2021-2031 also includes specific targets:

- Review village by-laws within the framework of the constitutional guarantee of non-discrimination;
- Consider amendments to the Land and Titles Act 1981 to protect women and children affected by the banishment of their husbands and fathers from their village of residence.

5.3.3. Child welfare

There is currently no comprehensive legislative framework in place for the protection of children. The authors are aware of the *Child Care and Protection Bill 2013* however it is unclear how this is progressing through to the Legislative Assembly. Enacting this Bill is identified as a key target in a number of the newly launched Ministry of Women, Community and Social Development policies and would domesticate Samoa's obligations under the CRC. The *Child Care and Protection Bill 2013* makes it mandatory to report 'any sexual abuse or exploitation of a child in a school, church or other religious institution, health facility, prison or corrections facility or any other place where children are supervised or cared for' (s53). The Bill establishes provisions for child protection orders and protecting the rights of children under the law.

Currently, Child Protection Officers can apply on behalf of the child for an Interim Protection Order under the *Family Safety Act* or make an urgent application for custody under the *Infants Ordinance.*

There is no specific reference to child abuse in the Crimes Act (except in reference to sexual assault, neglect and child pornography). The Crimes Act 2013 criminalises incest perpetrated by parents, siblings and grandparents. Offenders are liable for an imprisonment term not exceeding 20 years *(Crimes Act s55)*. Imprisonment terms of up to 14 years are also applicable in the case of sexual connection or an attempted sexual connection or committing an indecent act 'with or on a dependent family member under the age of 21 years' *(Crimes Act s56)*. Under this provision, consent is not a defence.

Sexual conduct with children under 12 years and with a young person under 16 carries prison term of up to life imprisonment and an imprisonment term not exceeding 10 years respectively (Crimes Act ss58-59).

While corporal punishment is banned in Educational settings under the *Education Act 2009 s 23,* it does not extend to other settings and is contradicted by the *Infants Ordinance Act (s14)* 'right of a parent, secondary school teacher, or other person having lawful control or charge of a child to administer reasonable punishment to the child'. Note that 'reasonable punishment' is not defined. The recent 2019 DHS-MICS preliminary findings reported an alarming 90.8 per cent of children between the ages of 1-14 years old had experienced physical punishment and/ or psychological aggression by caregivers in the previous month (SBS, 2019).

In the absence of a robust legislative framework, Samoa's approach to child protection is guided by *The National Child Care and Protection Policy 2020-2030* and *Samoa's Interagency Services Guide (IESG) to Gender-based Violence and Child Protection (2021).*

5.4. Criminal law

Domestic violence is not a crime in itself under Samoan law. Domestic Violence Protection Orders or injunctions are civil in nature; however, as noted above, a breach of an order constitutes an offence *(Family Safety Act, s 11).* Under the *Crimes Act 2013,* violence that takes place in domestic spaces can also be considered criminal where it falls under the ambit of other crimes. A non-exhaustive list of existing criminal offences that may be relevant in domestic violence incidents are outlined in Table 10. With the passing of the Crimes Act in 2013, stricter penalties were put in place for sexual offences against women. In relation to sentencing, when an offence takes place within the context of a domestic relationship, under the Family Safety Act 2013 the Court is directed to 'consider that fact as an aggravating factor against the offender when considering sentencing' (s11).

Table 10: Criminal offences that may intersect with domestic violence incidents

Charge	Legislation	Maximum sentence
Common assault	*Crimes Act 2013,* s123	1 year
Causing Injury (with intent)	*Crimes Act 2013*, s119 (1)	7 years
Murder	*Crimes Act 2013,* s103	Life imprisonment
Threats to kill or do grievous bodily harm	*Crimes Act 2013,* s129	7 years
Sexual Violation (Rape) *	*Crimes Act 2013*, Part 12, s52(1)	Life imprisonment
Sexual Violation (Sexual Connection)	*Crimes Act 2013*, Part 12, s52(2)	14 years

*Refer to Sexual violence section

Sentencing in domestic violence matters is governed by the *Crimes Act 2013,* the *Family Safety Act 2013,* the *Community Justice Act 2008* and the *Evidence Act 2015,* as well as case law. There are particular matters the court must have regard to in sentencing cases of domestic violence, set out in the *Family Safety Act 2013, s17*.

Concerns have been raised about inappropriate factors taken into consideration by the judiciary when sentencing in cases of gender-based violence, such as gender stereotypes and traditional apology *(ifoga)*. The number of GBV cases reported to the authorities is said to be lower than the actual cases as *ifoga* ceremonies may be performed by the offender's family to rebuild the relationship between them and the victim's family (Boodoosingh *et al.*, 2018) instead of seeking justice through official channels. The provisions of the *Community Justice Act 2008* (s6) allow for the *ifoga* and penalties imposed by the village fono to be included in sentencing considerations. In some instances, customary reconciliation may result in a perpetrator's sentence being reduced in cases of violence against women (SLRC, 2016). The apologies are made, not by the individual perpetrator but collectively by the family. The primary aim of the *ifoga* is to maintain harmony between families, the 'pain and suffering of a victim (predominantly women) is secondary' (Samoa Law Reform Commission, 2016, p. 36).

The Samoa Law Reform Commission undertook public consultations when reviewing Samoa's compliance with CEDAW and posed the question – 'Should customary reconciliation such as ifoga continue to be taken into account as a mitigating factor in sentencing in cases of violence against women, particularly in cases of sexual offending? (SLRC, 2016, p36). While recognising the vital and central role of the village fono in community harmony and tackling the family violence, the majority of respondents felt that customary reconciliation such as ifoga or penalties imposed by the village should not be taken into account in sentencing:

> . . . "the Village Fono [Amendment] Act plays a very important part in village governance as well as maintaining peace and harmony within village communities. However, Samoa Victims Support Group (SVSG) submits that in cases of sexual offending, the customary reconciliation such as ifoga should not be taken into account as a mitigating factor in the formal justice system sentencing. SVSG deals with survivors of sexual offending on a daily basis. We see the trauma, the loss and the pain in these survivor's face. SVSG accepts the ifoga in keeping the peace within families and villages, however, taking it further as a mitigating factor in sentencing of sexual offending cases is like condoning the magnitude of these acts on the lives of the survivors" (SLRC, 2016, p36)

5.5. Sexual violence

Sexual violence offences including sexual violation, intent to commit sexual violation, incest, and sexual contact of a child under 13 or young person between 13-16 are set out in the Crimes Act 2013. The definition of rape in the *Crimes Act 2013 (ss 48, 49, 52)* is a narrow one involving 'non-consensual penetration of the female's genitalia by the male penis' and carries a maximum penalty of life imprisonment. Rape is separated from non-consensual 'sexual connection', which has a much broader definition of penetration of the genitalia or anus by (a) (i) any part of the body of any other person, (ii) any object held or manipulated by any other person; or (b) connection between the mouth or tongue or any part of the body of any person and any part of the genitalia or anus of any other person. Unlawful sexual connection carries a maximum penalty of 14 years imprisonment'. The Act also raised the sentence for attempted rape from 10 to 14 years.

The Family Safety Act 2013 s2 states that 'sexual abuse' means any conduct that abuses, humiliates, degrades or otherwise violates the sexual integrity and privacy of the complainant without his or her free will or consent'.

The Crimes Act 2013 specifies that consent needs to be 'freely and voluntarily given' and outlines circumstances which do not amount to consent:

1. merely because the person does not protest or physically resist the sexual connection or other sexual activity, or where;
2. consent is extorted by fear or bodily harm or by threats; or
3. consent obtained by personating the person's spouse or partner; or
4. consent obtained by a false representation as to the nature and quality of the act; or
5. the person is asleep or unconscious; or
6. the person is affected by alcohol or other drug to the extent that he or she cannot choose to consent or not to consent to the sexual connection or other sexual activity; or
7. the person is affected by an intellectual, mental or physical condition or impairment, or physical condition of such a nature or degree that he or she cannot consent to the sexual connection or other sexual activity (*The Crimes Act 2013*, p26)

The Crimes Act 2013 makes it an offence to have any form of sexual connection with a person under the age of 16 years old. The Act establishes that a person under the age of 13 years old is incapable of giving consent to sexual activity (s 58). Further, while mistaken belief of age is a defence to sexual contact with a person between the ages of 12 and 16, it places the burden of proof on the defendant by requiring them to show that reasonable steps were taken to ascertain age (s58).

The law contains a specific criminal provision regarding child pornography in the *Crimes Act 2013 (s 82).* The law specifies a seven-year prison sentence for a person found guilty of publishing, distributing, or exhibiting indecent material featuring a child.

Sexual harassment is outlined in the *Labour and Employment Relations Act 2013* however not explicitly criminalised.

The Crimes Act 2013 criminalises marital rape, which up until the introduction of the Act, was not an offense under the previous *Crimes Ordinance 1961*. The *Crimes Act 2013 49* (4) states a 'person may be convicted of sexual violation in respect of sexual connection with another person notwithstanding that those persons were married to each other at the time of that sexual connection'. Note however that sexual violation in respect of 'sexual connection' carries with it a lesser penalty (maximum of 14 years) compared to 'rape' (maximum of life imprisonment). This implies a view that marital rape is a less serious offence than non-marital rape.

The recent 'State of Human Rights Report for 2020' released by the National Human Rights Institute revealed some alarming attitudes towards marital rape (OONHRI, 2020). The report summarised findings from the Village Safety Committee Pilot Project, one of the recommendations to come out of the National Inquiry into Family Violence (NIFV). In discussions with Village Safety Committee participants it was found that that the majority of male participants did not know that forcing your spouse to have sex is considered rape and a serious crime under the *Crimes Act 2013* (OONHRI, 2020). In fact, both men and women believed that 'Women are obliged to have sex with their husbands' (ibid,p10). Men further believed that not doing so was an abuse of their needs, "Ua sauaina oumana'ogo" (ibid, p10). This would suggest that not only are there harmful beliefs about gender roles and sexual relationships but also a lack of understanding what the law says about GBV.

In 2017 Samoa introduced the *Sex Offenders Registration Act 2017* to assist in the investigation and prosecution of sex offences (particularly child offences), to assist in the monitoring and management of sex offenders in the community, as well as to reduce recidivism amongst sexual offenders.

5.6. Other forms of gender-based violence

5.6.1. Trafficking and modern slavery

Section 8 of the *Constitution* guarantees 'Freedom from Forced Labour' (1) No person shall be required to perform forced or compulsory labour, with some exceptions including military service, a sentence of the Court, a state of emergency or service required by Samoan custom. Under the *Crimes Act 2013, ss 155 and 157,* trafficking in people is a criminal offence. A further offence is 'dealing with a person under 18 for sexual exploitation, forced labour, or the removal of body parts'. Punishment for these offences are up to 14 years imprisonment.

Data on the extent of trafficking, forced labour and sexual exploitation is limited. A report by the Bureau of International Labour Affairs in 2019 found that Samoa had made 'minimal advancement' in efforts to eliminate the worst forms of child labour (ILAB, 2019). The ILAB reported that children in Samoa are engaged in the worst forms of child labour, including in commercial sexual exploitation, sometimes the result of human trafficking (ILAB, 2019). The preliminary results from the DHS-MICS 2019 indicate that 13.8 per cent of children aged 5-17 years are involved in child labour (SBS, 2019).

Samoa is currently not a signatory of the 'Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children', supplementing the United Nations Convention against Transnational Organized Crime.

The newly launched *National Policy on Gender Equality and Rights of Women and Girls 2021-2031* identifies transnational crime, trafficking and exploitation of prostitution as a key outcome area with targets including acceding the Protocol to Prevent, Suppress and Punish Trafficking; undertaking a study on the prevalence of trafficked women and girls in Samoa and provide health services, protection and rehabilitation for victims and survivors of sexual exploitation. It should be noted that these activities have not been costed.

5.6.2. Forced and early marriage

The *Marriage Ordinance Act 1961* sets the minimum age of marriage at 18 for males and 16 for females in Samoa *(s9).* Parental or guardian consent is required for females under 19 and males under 21 to marry *(s10).* Further, consent is outlined only in relation to consent to marriage of a minor by a parent or guardian *(s11).* There is no provision in current legislation explicitly requiring the full and free consent of both parties to the marriage.

In relation to the offence of sexual conduct with a young person under 16 in the Crimes Act, there is a provision (*s 59((4))* that states 'no person can be convicted of a charge under this section [s59] if the person was married to the young person concerned at the time of the sexual connection or indecent act'. This contradicts both the legislated minimum age of marriage and the minimum age of consent to sexual activity.

The current legislation in Samoa leaves girls extremely vulnerable to early and forced marriage. Data on marriage rates in adolescents show significant inequality between genders; 7.4 per cent of women aged 20-24 years old were first married before the age of 18 compared with only 2 per cent of men in the same age group, according to the 2019 DHS-MICS preliminary fact sheet. Early marriage has a significant impact on the trajectory of educational attainment and employment for female youth.

Data from the 2016 census shows that there was a significant difference in school attendance rates for the 15 to 19-year-old female cohort where 97 per cent of married females were not in school compared to 21 per cent of single females (SBS, 2020b). Data also reveals that only 47 per cent of female youth who are married

have completed secondary school compared to 66 per cent of single female youth (SBS, 2020b). Previous research has shown that early marriage reduces the likelihood that married women will have equal decision-making power in relation to family planning and contraceptive use. The nexus between gender-based violence and sexual and reproductive health for adolescents and youth has been raised as particularly important in the Pacific context; 'In many cases, teenage pregnancy is the result of a girl's lack of autonomy over her own body and her pregnancy the result of unwanted or forced sexual relations' (UNFPA, 2013, p. 7). Girls married before the age of 18 are less educated, have more children, experience less reproductive autonomy and access to rights and are more likely to experience domestic violence (UNICEF 2005).

There have been multiple human rights committees which have now called on Samoa to set an equal minimum age of marriage at 18 for males and females, including the CEDAW and CRC committees as well as the Samoa Law Reform Commission and the Office of the Ombudsman/ National Human Rights Institution.

Urgent reform is required to raise the minimum equal age of marriage to 18 years without any exceptions for customary practices and to prohibit forced marriage.

The Child Care and Protection Bill 2013 provides for this: 'for all purposes under the law, and despite the provision of any law to the contrary, both male and female children may lawfully marry after they have reached the age of 18 years' (s 52). Passing of this bill should be prioritised as a matter of urgency.

6 Law and policy in relation to key populations

6.1. Adolescents and youth

Young people are at particular risk of HIV and STIs and are less likely to access sexual health information and condoms. More than a quarter of all chlamydia infections in 2015 were in the 15-24-year-old age group, suggesting that young people are at increased risk (MoH, 2017b). Through government and non-government agencies, peer educators distribute condoms during education sessions and condom vending machines are also located in nightclubs and public toilets in Apia (NZFAT & UNFPA, 2015, p. 10). They also deliver HIV and STI awareness activities in village and community settings. However, data about young people who participate in these activities and/or access these supplies, is not systematically collected and analysed. Despite awareness of contraception being relatively high, only 0.8 per cent of sexually active females and 8.6 per cent of males aged 15-19 years are using contraception (SBS, 2020d).

The teenage fertility rate showed a slight decrease from the 2001 census to the 2016 census (from 46 children per 1000 adolescent women to 31 per 1000) (SBS, 2020b). These numbers may be higher in rural areas. A total of 467 teenagers (or 5 per cent of the 8,985 female population aged 15 -19 years) had already given birth at the time of 2016 census (ibid, 61). There are health risks associated with teenage parenthood for mothers and their babies and young people are especially vulnerable due to restricted availability of appropriate contraceptives and stigma faced by adolescent mothers. Complications in pregnancy and birth represent the main cause of death in girls aged 15-19 globally (WHO, 2020). Adolescent mothers have higher risk of experiencing complications either themselves (such as eclampsia, puerperal endometritis, infections) or their babies (such as low birth weight, severe neonatal conditions and preterm delivery) (WHO, 2020).

Norms around sexuality and sex education discourage young people from discussing issues of reproductive health in the home and schools' settings and accessing contraception. There is a need to strengthen provision of SRH information in both the school and out of school settings to assist young people to avoid unintended pregnancies while supporting those who get pregnant as well as establishing the foundations for safe, healthy and respectful relationships. This information needs to be comprehensive, culturally appropriate and youth friendly. While this need is now reflected in multiple national policies and statements, there has yet to be a clear mandate for minimum CSE curriculum to be delivered in all schools.

The rates of intimate partner violence (IPV) for young women is high, with 46.4 per cent of young women between the ages of 15-24 experiencing physical, sexual and/or emotional violence from their partners (SBS, 2020b). As discussed, early marriage can also lead to poor maternal health outcomes due to its association with early pregnancy and reduced reproductive autonomy. Both early marriage and adolescent pregnancy have economic consequences, as girls may be prevented from continuing their education or employment (Wodon et al., 2017).

There have been a number legislative 'barriers' or gaps to adolescents and youth SRH and protection from GBV identified through the review. These include:

- the absence of legislation guaranteeing access to family planning (including contraception), maternal health services and voluntary HIV testing, counselling and treatment for all including adolescents and youth
- the absence of legislation mandating full, free and informed consent for the aforementioned, factoring in the evolving capacity of adolescents to consent;
- restrictive abortion laws with no clear guidelines for practitioners and patients on the delivery of safe abortion services and post abortion care to the full extent of the law;
- the absence of legislation and policy mandating the inclusion of comprehensive sexuality education in the national school's curriculum;
- unequal minimum age of marriage laws increasing the vulnerability of girls to early marriage; and
- the absence of a comprehensive legislative framework for the protection of children in the context of high prevalence of violence against children.

As discussed throughout this review there have been a number of national policies that have sought to include adolescents and youth as a key population group. Implementing policy commitments like passing of the Child Care and Protection Bill 2013 would help to domesticate international commitments under the CRC including making it mandatory to report 'any sexual abuse or exploitation of a child in a school, church or other religious institution, health facility, prison or corrections facility or any other place where children are supervised or cared for' (s 53).

While strengthening adolescent friendly SRH services has been incorporated into key national health policy, concerningly the Health Facility Readiness and Service Availability (HFRSA) Assessment conducted in 2018 found that only 0 out of the 14 facilities audited provide adolescent and youth friendly (AYF) sexual and reproductive health services in line with global standards (UNFPA, 2018). Even in the absence of explicit legal or administrative prohibitions on access to SRH services including contraception, practitioners may still restrict access to adolescents or unmarried women due to social norms and beliefs (Starrs et al., 2018). Affirmative laws guaranteeing the right to access linked with policy and guidelines clearly addressing full, free and informed consent for adolescents can create an enabling environment for adolescent and youth friendly sexual and reproductive health services.

6.2. People living with disabilities

Based on the 2016 Census, about 7.1 per cent (11,857) of the population aged 5 years and older in Samoa are classified as having some disability (SBS, 2018). There is very limited data available on the SRH of people with disabilities however the census indicated that 29.7 per cent of people with disabilities 18-49 years old were married compared to nearly 60 per cent people without disability with data suggesting that more women with disabilities gave birth outside of marriage. The reason for this trend is unclear with the authors indicating the need to do further research to explore knowledge and access to contraception for non-married women with disabilities as well as rates of sexual violence.

There are very limited legal protections from people with disabilities in Samoa. There are no overarching anti-discrimination clauses related to disability within Samoa's Constitution. The are several provisions in legislation that directly relate to people with disabilities, however they are ad-hoc and do not address the significant and unique barriers people with disability face in realising their rights (including to SRHR and to live free from violence), for example:

> *Crimes Act 2013* s 63(1) penalises a person who has or attempts to have a sexual connection with a person who is severely intellectually disabled to imprisonment for a term not exceeding 7 years; s 63(2) penalises a person who indecently assaults or attempts to indecently assault a person who is severely intellectually disabled to imprisonment for a term not exceeding 7 years.

Mental Health Act 2007 s 3 […] objectives and principles: (a) to ensure that persons with a mental disorder receive the best possible care, support and, where required, treatment and protection; (c) to minimise the restrictions upon the liberty of persons with a mental disorder and interference in their rights, dignity and self-respect, so for as is consistent with their proper care, support, treatment and protection and the protection of other persons; (i) to eliminate discrimination against, and abuse, mistreatment and neglect of persons with a mental disorder

Samoa is a signatory of the CRPD. While domestic legislation around the rights and protections of people with disability are lacking, there are some policy commitments that seek to align with the CRPD, the most notable being the newly launched National Policy on Disability 2021-2031. Unlike the previous iteration of the National Policy on Disability which made no specific mention of SRHR, this policy sets out the following:

- **Outcome area 3:** Strengthened provisions of support, health services and assistive devices.
  - Strengthen sexual and reproductive health (SRH) education also through family life education and other community education and awareness programs.
  - Improve access to SRH and justice services including all other needed public services for persons with disabilities. (p. 15)

- **Outcome area 6:** Enabling environment for disability-inclusive development strengthened.
  - Full harmonisation of Samoa laws with the CRPD. This includes the possibility of developing a Disability Bill (legislation) for Samoa to address existing gaps with disability-inclusion. (p. 18)

The National Policy is silent on GBV beyond disaggregating GBV data. The proposal of a new Disability Bill is significant and would provide an important opportunity to enshrine the rights of people with disabilities to SRH including reproductive choice and fertility.

There is some integration of disability into other key SRH and GBV related policy, including:

- *MWCSD Strategic Corporate Plan* Outcome 3.1 Ending violence in the family and especially against women including a target to reduce violence against persons with disability; Outcome 3.3 strengthened provision of support, health services and assistive devices for persons with disability and [separately] sexual reproductive health rights for vulnerable groups.

- The *IESG* mentions disability in the commitment to providing inclusive services and identifies disability disaggregated data as a gap, however does not provide detailed guidance in relation to GBV service provision for people with disabilities.

- The *National HIV, AIDS & STI Policy 2017-2022* identifies people with disabilities as a key population group to target in ensuring accessibility of services however provides no specific guidelines or targets in relation to achieving improved accessibility.

- The *Community Development Plan 2021-2026* promotes a disability inclusive approach including a focus on the reproductive health status of women with disabilities

- The *National Policy on Family Safety: Elimination of Family Violence 2021 – 2031* Outcome Area 1 is reduced violence against women and children, persons with disabilities, elderly as well as other vulnerable populations.

All of the key policies and plans relating to SRH mention inclusion of people with disabilities in SRH services, however there are no specific targets or strategies outlined to achieve this. In addition, there is a lack of disability disaggregated data against specific SRH indicators to inform policy and planning. Further engagement with people with disabilities and their organisations is vital in ensuring that policy adequately addresses the barriers they experience to SRH.

6.3. Sex workers

Sex work is illegal in Samoa, which has significant impacts on sex workers' sexual and reproductive health as well as their access to safe working environments, and SRH services and support. Prostitution is illegal under the *Crimes Act 2013* stating 'a person is person is liable to imprisonment for a term not exceeding 3 years who has sexual intercourse or sexual connection, or agrees, or offers to have sexual intercourse or sexual connection with another person for gain or reward' (s 72(1)). Solicitation is punishable for a term not exceeding 5 years (s 73(1)). Living on the earnings of sex work or procuring a woman or girl to have sexual intercourse with a male are punishable by prison terms of up to 10 and 7 years respectively (ss 74-75). Brothel owners, under the C*rimes Act 2013* are liable for prison terms of up to 10 years for heterosexual prostitution and up to 7 years for homosexual sex (ss 70-71).

According to the Pacific Multi-Country Mapping and Behavioural Study conducted in 2016, there are about 400 female sex workers in Samoa, most of whom are engaged in sex work for economic reasons (Worth et al., 2016). According to the study, the women's clients included both local and foreign men, and condom use among this group was only 33 per cent (Worth et al., 2016, p.9). The study found that sex workers were not actively engaging with sexual and reproductive health services with none of the women interviewed having accessed a sexual and reproductive health service in the prior 12 months, including HIV testing (Idid).

Due to the illegal status of sex work in Samoa, the rates of sex workers engaging with health services are low, particularly SRH. Provision of confidential counselling, health services and condom programmes to this group are targeted through the 2017-2022 National HIV, AIDS, and STI Policy, however the level of uptake on these opportunities are not known to the authors of this report. It is important that there are specific measures to include sex workers in SRH related policy as they are not only less likely to access services but are more vulnerable to SRH related morbidity and mortality and gender-based violence. There is more information needed to understand the specific needs, barriers and enablers to accessing SRH in this population.

There are extremely limited policy provisions in relation to SRH and GBV for sex workers, likely due to their illegal status in Samoa.

The *National HIV, AIDS & STI Policy 2017-2022* identifies sex workers as a key population as having a high risk for HIV and STIs or unique health needs with regards to prevention or treatment. Strategic objective 3 b) within the policy is to 'Identify and eliminate barriers for all populations to get screened for HIV and STIs, particularly youth, fa'afafine, sex workers, inmates, and partners of ANC women'. As mentioned, the policy also highlights the importance of confidentiality being maintained for sex workers to ensure that their use of prevention services does not expose them to legal risk.

Nonetheless, this legal context creates barriers for reaching sex workers with SRH and GBV services and improving safe sex practices. Criminalisation of sex work is a barrier to the Samoan government developing policies that target the SRH and GBV issues experienced by this community. As a result, while they are recognised in some policies as being at higher risk for STIs and HIV (for example, the *National HIV, AIDS & STI Policy 2017-2022*), they are invisible in other National policies.

6.4. LGBTIQ communities

The *Constitution* of Samoa provides no guarantees to equality or protection from discrimination based on gender, gender identity or sexual orientation, leaving members of the LGBTQI community exposed to ongoing discrimination and exclusion. The criminalisation of homosexuality poses a significant barrier to acknowledging and/or addressing the rights and needs in relation to SRH and GBV of people who identify as LGBTIQ in the Samoa. Under the *Crimes Act 2013* s 67, sodomy is criminalised and punishable by up to 7 years' imprisonment.

Criminalising these sexual acts also risks criminalisation of victims of sexual assault perpetrated by someone of the same sex, especially in contexts where attitudes to sexual violence and LGBTIQ people are deeply prejudiced and discriminatory. For example, rather than being identified as a victim of sexual assault they may be portrayed as committing the offence of sodomy.

Samoa has a vibrant gender diverse community called fa'afafine[9], fa'afatama who are recognised as part of traditional Samoan customs and culture. This population does not fit neatly into the categories normally assigned to LGBTIQ populations. While they have a role in Samoan cultural traditions, they are also influenced by changing global attitudes. As Farran (2010, p. 13) outlines, 'they are part of tradition but also symbols of change'. Legal reform to enshrine the rights of fa'afafine and fa'afatama, Farran suggests, has been problematic for the legislators due to traditional values around gender and gender roles. It is vital that there is evidence-based engagement with government and policy makers around specific measures to ensure protection from violence and realisation of SRHR for the LGBTIQ community, under the law.

There are an estimated 25,000-30,000 fa'afafine and men who have sex with men in Samoa, according to the Pacific Multi-Country Mapping and Behavioural Study (Worth et al., 2016). Worth et al (2016) stated that 43.9 per cent of those interviewed reported they had never used a condom for sex with a regular partner in the last 12 months (Worth et al., 2016). HIV knowledge was high among the participants of the study but only 16.3 per cent had had an HIV test (Worth et al., 2016). Currently, there are limited specific sexual health information services for men who have sex with men or other LGBTIQ communities in Samoa. The Samoa Fa'afafine Association provides targeted outreach for fa'afafine and advocates for the rights of LGBTIQ.

The *National Policy on AIDS/HIV and STIs 2017-22* recommends that health sector organisations partner with leaders from the fa'afafine community to deliver appropriate health and education services, including in rural areas. The policy also suggests recognising and recording fa'afafine as a distinct gender during data collection and addressing the stigmatisation and abuse they experience.

There are currently no specific targets incorporated into the *National SRH Policy 2018-23* on inclusion of LGBTIQ communities in SRH services and education. There is limited information on the SRH needs of lesbian, gender diverse or transgender women in Samoa.

The *National Policy on Family Safety: Elimination of Family Violence 2021 – 2031* mentions people with gender diverse identities and broadly mentions including them in early intervention and service delivery.

The *National HIV, AIDS & STI Policy 2017-2022* identifies people fa'afafine and fa'atama and men who have sex with men as a key group to target in ensuring accessibility of services however provides no specific guidelines or targets in relation to achieving improved accessibility.

9 Third and fourth genders of fa'afafine and fa'afatama have always existed within Samoan society. When translated literally, they mean "in the manner of women" (fa'a fafine) and "in the manner of man" (fa'a fatama)

The *National Policy on Gender Equality and Rights of Women and Girls 2021-2031*

> Under target 2.6 'Improved access to SRH and other basic services', develop and strengthen life skills in doctors and nurses to support women, men, and people of diverse sexual orientation, gender identity and expression on contraceptive decisions, and ensure ready access to contraceptives; and
>
> Under 5.2 Incorporate increased gender sensitivity in all aspects of transnational crime prevention, law enforcement responses and services rendered, particularly in relation to human trafficking. This should include attention to the special needs and situation of men, women, and people with diverse sexual orientation, gender identity and expression.

As with other identified key population groups, it is vital to engage LGBTIQ people in any further policy development to ensure that provisions adequately capture their needs.

7 Humanitarian and disaster contexts

Samoa is susceptible to natural disasters with 70 per cent of the population living along the coastline, exposing people to cyclones, tsunamis and flooding. In February 2018, Tropical Cyclone (TC) Gita made landfall as a category 2 cyclone. Damages were reported in Samoa which included localized flooding. In 2015 a Meteorological Drought was officially declared. There were two recent major natural disasters, the tsunami of 2009 that killed 149 people and TC Evan in 2012 that displaced close to 5,000 people. In 2019, the Samoan Ministry of Health declared a measles epidemic in Samoa with numerous child and infant fatalities (Craig et al., 2020). The Global Climate Risk Index (2021) ranks Samoa at 70th with the highest climate risk among 183 countries.

Samoa has to date been spared the worst health impacts of COVID-19 with low confirmed case numbers (WHO, 2021). Despite this Samoa remains vulnerable to the threat posed by the pandemic, and increasingly by the new and emerging strains of COVID-19. Even with limited cases to date in Samoa, COVID-19 related public health measures have had a gendered social and economic impact, including a spike in GBV, reduced access to goods and services, unemployment and increased poverty disproportionately impacting women (UN Women, 2020). Modelling completed to assess the potential impact of the COVID-19 pandemic on SRH in low- and middle-income countries projected that in the event of a 10 per cent decline in the use of short and long acting contraceptives due to disruptions in services, an additional 28,000 maternal deaths would result (Riley et al., 2020). The pandemic, alongside recent natural disasters and protracted emergencies has shone a spotlight on SRH and GBV inequalities and vulnerability.

Research by the Red Cross reveals that people displaced by disasters in Samoa are at higher risk of GBV than those who manage to stay in their communities (International Federation of the Red Cross & Red Crescent Societies [IFRC], 2016). Relocation of rural Samoan communities may be a contributing risk factor to increasing post-disaster GBV risk and prevalence. This sits alongside the key drivers of GBV and violence against women, in particular unequal gender and power relations (Arango et al., 2014). The Red Cross study found that most GBV survivors do not seek help in the aftermath of a disaster. When people have lost family members, belongings and livelihoods, solidarity within the community (at the costs of victim/survivor's safety and well-being) may be considered more important than ever (IFRC, 2017). The study found that whilst GBV service providers know how to deal with GBV cases in a normal setting, they had not been trained to target and respond during a broader crisis or emergency situation.

The COVID-19 emergency has seen a spike in GBV and donor support for victim/survivor services. The Samoa Victim Support Group and Faataua le Ola continued to operate their free Helplines, which offered counselling and psychosocial support. From 4 May to 4 September 2020 the groups have recorded a total of 924 calls for help and enquiries received.

Whilst SRH delivery has improved there are still significant issues regarding service readiness and barriers to rights-based approaches especially, for example, access to emergency contraception, publicly known access to post abortion care, GBV referrals, and commodities (UNFPA, 2018). Ensuring the health system is emergency ready and prepared is vital.

There are a range of government departments and offices key to disaster response in Samoa. The National Disaster Management Office coordinates disaster preparedness and response in Samoa with the Ministry of Health playing an important role in relation to SRH along with the Ministry of Women, Community and Social Development, Police, Courts and Justice in relation to GBV. The *National Disaster Management Plan 2017-2020 (NDMP)* highlights the need for government departments and offices to mainstream Disaster Risk Reduction (DRR) across all sectors, including Health (GoS, 2017).

7.1. International frameworks, commitments and guidelines

Samoa is a signatory to many international treaties and agreements that require it to uphold women and children's rights alongside the rights of marginalized groups. This includes broad treaties and agreements focussed on gender, LGBTIQ people, disability and children's rights already outlined in this report, as well as agreements specific to climate change and disaster. For example, the SDGs, the United Nations Framework Convention on Climate Change (UNFCCC) (1994) the Paris Agreement (2015), ratified in 2016 and the Sendai Framework for Disaster Risk Reduction (2015). Donors in Samoa are broadly supportive of the outcomes of the World Humanitarian Summit High-Level Roundtable on Women and Girls.

International best practice in sexual and reproductive health in emergencies (SRHiE) and gender-based violence in emergencies (GBViE) indicates explicit adoption by Government in policy of the following;

- **SRH -** a comprehensive essential package of sexual and reproductive health interventions that aligns with the Guttmacher-Lancet Commission as part of strengthening the health systems and readiness.
- **SRHiE** - Minimum Initial Service Package for Sexual and Reproductive Health in Crisis Situations (MISP). This is complemented by the Adolescent Sexual and Reproductive Health (ASRH) Toolkit for Humanitarian Settings (Inter-Agency Working Group, 2020).
- **GBV -** Essential Services Package for Women and Girls Subject to Violence as part of strengthening the GBV response system.
- **GBViE** - Minimum Standards for Gender-Based Violence in Emergencies Programming and Guidelines for Integrating Gender-Based Violence Interventions in Humanitarian Action (IASC, 2015).

The Minimum Initial Service Package (MISP) for SRH in crisis situations is a series of crucial, lifesaving activities required to respond to the SRH needs of affected populations at the onset of a humanitarian crisis (UNFPA, 2020). These needs are often overlooked with potentially life-threatening consequences. The MISP is developed by the Inter-Agency Working Group for Reproductive Health in Crisis (IAWG). UNFPA, in partnership with stakeholders, supports the implementation of the MISP to make sure that all affected populations have access to lifesaving SRH services. The key aims of the MISP are to ensure that there is no unmet need for family planning, no preventable maternal deaths and no gender-based violence (GBV) or harmful practices, even during humanitarian crises.

The six objectives of the MISP are to:

1. Ensure the Health Sector/Cluster identifies an organization to lead implementation of the MISP.
2. Prevent sexual violence and respond to the needs of survivors.
3. Prevent the transmission of and reduce morbidity and mortality due to HIV and other STIs.
4. Prevent excess maternal and newborn morbidity and mortality.
5. Prevent unintended pregnancies.
6. Planning for comprehensive services and their integration into existing services.

The Ministry of Health and linked agencies are key stakeholders in SRHiE, alongside relevant DRR agencies and the community. IPPF and UNFPA amongst others have supported work to progress SRHiE and GBViE

through MISP training with their in-country partner. In Samoa, the Samoa Family Health Association (SFHA) is a key SRH stakeholder. They have invested in work at the community level and established focal points among women leaders in villages. Under the leadership of the National Disaster Management Office, SFHA and the Red Cross conduct SRHiE preparedness work and simulations with village communities. This includes MISP training conducted in 2021. The National Disaster Management Office has been able to establish contacts with women leaders, who have taken ownership of the interventions and more women have joined the village disaster committees to better represent the needs of women and girls in emergency.

Whilst IPPF and member association SFHA continue to support the roll out of MISP training, MISP has not been explicitly articulated in national policy or legislation. Notwithstanding this there are policy mandates that broadly support this that will be discussed below.

Two documents produced by the Inter-Agency Standing Committee (a forum of UN and non-UN humanitarian partners, aiming to strengthen humanitarian assistance) provide the foundational guidance on preventing and responding to GBViE: the *Guidelines for Integrating Gender-based Violence Interventions in Humanitarian Action: Reducing risk, promoting resilience and aiding recovery* (IASC, 2015) and the *Minimum Standards for Gender-Based Violence in Emergencies Programming* (IASC, 2020). The latter document outlines GBViE standards, a comprehensive set of 16 standards developed by UNFPA and providing practical guidance on how to prevent and respond to gender-based violence in emergencies and facilitate access to multi-sector services (IASC, 2020). The GBViE standards also build on the *Essential Services Package for Women and Girls Subject to Violence* (UN Women, 2015). It is important to note that the Minimum Standards for SRH and GBViE are interrelated and inter-dependent. Both sets of standards should be explicitly incorporated into relevant disaster, gender, national development plans and health policy as a basis for preparedness, response and recovery.

7.2. Regional agreements and networks

Samoa is a signatory to numerous disaster and climate related regional commitments. The Pacific Resilience Partnership (PRP) has a technical working group with a focus on climate smart Disaster Risk Management (DRM) legislation. Whilst gender equality is a stated goal of several agreements,[10] the only SRH specific agreement is the KAILA! Strengthening Climate Change Resilience through Reproductive, Maternal, Newborn, Child and Adolescent Health (2015). Other regional climate and disaster agreements don't appear to have specific provisions or guidance regarding SRHiE or GBViE, however there are references to addressing gender equality and inequalities especially with vulnerable groups.

Examples of regional DRM commitments include;

- Framework for Resilient Development in the Pacific: An Integrated Approach to Address Climate Change and Disaster Risk Management [FRDP] 2017 – 2030 (2016)
- The Boe Declaration on Regional Security and related action plan (2018)
- Framework for Pacific Regionalism endorsed by the Pacific Islands Forum (2014)
- Suva Declaration on Climate Change adopted in 2015 by the Pacific Islands Forum
- The Pacific Platform for Disaster Risk Management (2016)
- The Small Islands Developing States Accelerated Modalities of Action (SAMOA Pathway)

10 For example, the Framework for Resilient Development in the Pacific: An Integrated Approach to Address Climate Change and Disaster Risk Management [FRDP] 2017 – 2030, "The FRDP also recognises the critical role of integrating gender considerations, and advocates for equitable participation of men and women in planning and implementation of resilience building activities.", see page 2, http://tep-a.org/wp-content/uploads/2017/05/FRDP_2016_finalResilient_Dev_pacific.pdf

- KAILA PACIFIC VOICE FOR ACTION ON AGENDA 2030, Strengthening Climate Change Resilience through Reproductive, Maternal, Newborn, Child and Adolescent Health (2015)
- UNFPA's Regional Prepositioning Initiative has established hubs in Australia and Fiji that can quickly provide supplies to 11 countries.
- Pacific regional domestic violence working group (Pacific Community, 2018)

The Pacific Humanitarian Team (PHT) is an agreed collaborative mechanism of all major humanitarian actors that provides assistance through the region. Samoa also links to the Pacific Humanitarian Protection Cluster (PHPC) which is regional in coverage and works on an ongoing basis to enhance regional and national capacity for gender and protection-sensitive disaster preparedness, response, and recovery in Pacific Island Countries. The Regional Health & Nutrition Cluster Support Team (Co-led by WHO and UNICEF) has been active with partners in Samoa and the Regional Protection Cluster Support Team (led by UN Women). The SRH sub-cluster is currently increasing efforts to strengthen SRH in emergency preparedness and response in the Pacific region, including in Samoa.

7.3. Domestic policy and legislation

Samoa has in place national laws, policies and action plans that govern the country's disaster preparedness and response, including:

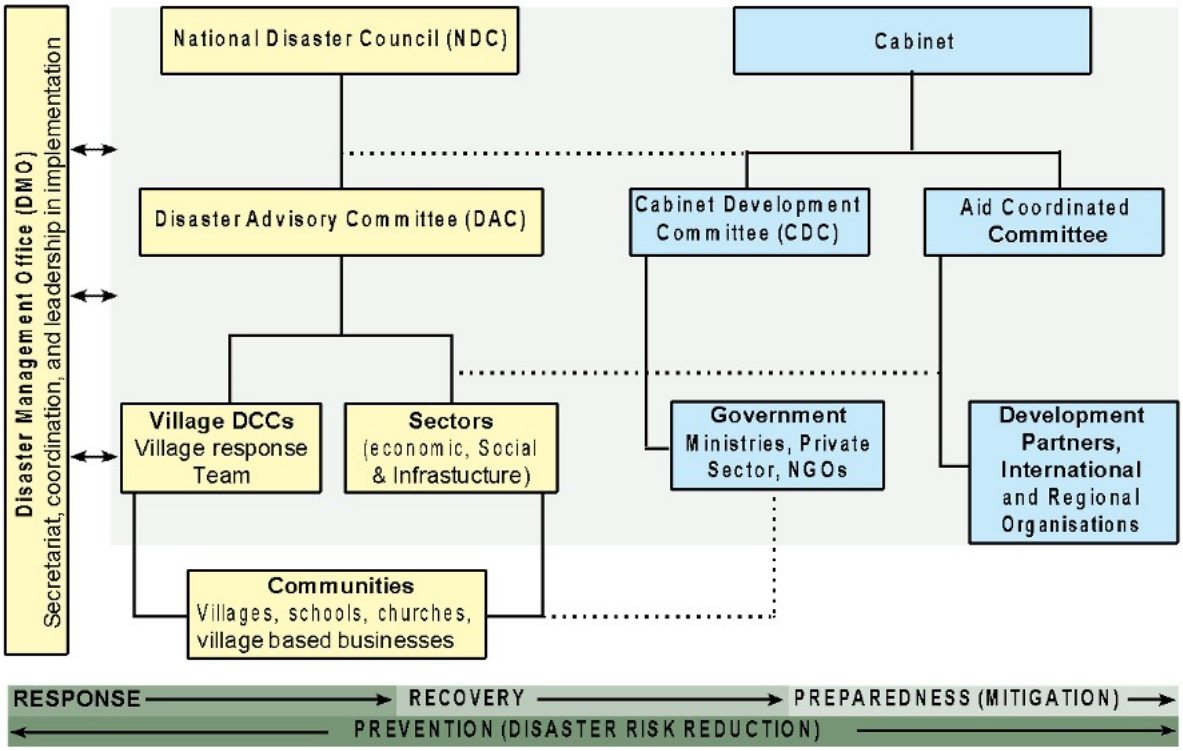
- *Disaster and Emergency Management Act 2007*
- *Planning and Urban Management Agency Act 2004*
- *Ministry of Works Act 2002*
- *Fire and Emergency Services Act 2007*
- The Ministry of Health /National Health Service Service Continuity Emergency Plan
- National Adaptation Programme of Action (NAPA) 2005
- Samoa Climate Change Policy 2020 (spanning 2020-2030)
- Samoa's Disaster Management Plan 2017-2020 and Samoa National Action Plan for Disaster Risk Management 2017-2021
- National Tropical Cyclone Plan 2006
- National Avian and Pandemic Influenza Preparedness Plan 2008
- Samoa National Tsunami Plan 2008

The legal mandate for disaster response and management in Samoa is underpinned by the Constitution and extends to the *Disaster Emergency Management Act 2007* (DEMA).

The *National Disaster Management Plan 2017-2020 (NDMP)* sits under and compliments the DEMA 2007 with its plan of structures, roles and responsibilities for relevant agencies. The NDMP is supported by a 5-year action plan.

The diagram below is an extract from Samoa's NDMP. It illustrates the overarching responsibility of the National Disaster Committee and linkages with the Disaster Management Office at a National level through to communities. Through the directive of the National Disaster Committee a request for international assistance is submitted to aid agencies and development partners during a period of disaster or emergency. A legal review of Samoa's Humanitarian laws and policy framework in 2016 made numerous recommendations including the need to explain in full detail the expected roles and responsibilities which PHT cluster groups are to perform in country (Samoa Red Cross & IFRC, 2016). The latest NDMP broadly outlines the different sector's response and linkage with relevant clusters, although it is unclear how this is operating in practice.

Figure 1: Institutional arrangements for disaster risk management in Samoa



Source: *National Disaster Management Plan 2017 – 2020.*

Sitting under the NDMP, government agencies are required to develop internal disaster management plans and standard operating procedures (SOPs) to deal with emergencies and disasters which are specific to the services they are required to provide. The NDMP stipulates that all sector plans should include gender and disability as cross-cutting actions. This includes gender-sensitive policymaking, monitoring and evaluation as well as integrating gender in vulnerability, risk and capacity assessments. Additionally, it requires furthering women's participation and leadership in disaster management and promoting the systematic collection and use of sex and age disaggregated data and gender analysis. This plan provides scope for policy action that embeds and progresses related SRHiE and GBViE protocols and standard operating procedures.

The NDMP includes a section outlining responsibilities for each sector including the health sector. It is not detailed regarding SRH but does outline the requirement to "Promote safe delivery and provide reproductive health services" (p. 33). The NDMP also includes a requirement to "Estimate cost of interventions above normal to mitigate related risks (costs for immunization, vector control, disease control, health promotion and costs for the health management of gender-based violence and violence against women)" (p. 33). This provides additional policy scope to mandate MISP and the Minimum Standards for Prevention and Response to Gender-based Violence in Emergencies (GBViE standards).

Samoa's NDMP and the associated Action plan stipulates that the Government of Samoa will review current legislation to increase a focus on DRM including preparedness and prevention (Government of Samoa, 2017). At the time of writing, it was not apparent if this legal review is underway. This may be an opportunity to influence and integrate considerations of gender in emergencies, SRHiE and GBViE.

As required by the NDMP, the Ministry of Health has developed the *Disaster Risk Management: A Strategy for the Health Sector* (2017). This broadly mandates the need to:

- Ensure fast delivery and availability of adequate resources such as public health materials, drugs, sexual and reproductive health sanitary kits, medical equipment and supplies of other logistic materials (p8);
- Re-establish disrupted essential care services for women and children, including the provision of essential drugs, diagnostics and supplies; promote safe delivery; and provide sexual reproductive health services (p8).

The new *Samoa Health Sector Plan (HSP) 2019-2029* prioritises strengthening Samoa's Public Health System and as discussed has a central focus of utilising a fa'a-Samoa initiative of delivering primary health care to its communities. The key outcome 7 relates to disaster, "Improved Risk Management and Response to Disasters, Public Health Emergencies (Health Security) and Climate Change. The focus is on integrating health into climate change policies and strengthening resilience and adaptive capacity, health facility readiness, water and sanitation and capacity to respond to endemics (such as STI's and measles). SRH is not mentioned more broadly than STIs in the context of emergencies nor is GBViE.

The *Samoan National Sexual Reproductive Health Policy for 2018-2023* aims to achieve safe, effective, affordable and acceptable delivery of sexual and reproductive health services for all Samoans. As discussed in the main report, increasing financial investment will improve SRH service coverage and ensure targets identified in this policy can be realistically achieved. This is vital for SRHiE prepositioning. Whilst the policy acknowledges that disaster can exacerbate GBV, there is no other reference to emergency or disaster preparedness in relation to SRH or GBV.

At the time of the review, it does not appear as though the Ministry of Women, Community and Social Development has a standalone DRM plan, however disaster is integrated into two newly launched policies: *Outcome 6 of the National Child Care and Protection Policy 2020-2030* is to ensure that child protection is integrated into disaster risk management and response. The *National policy on Gender Equality and Rights of Women and Girls 2021-2031* outlines targets around engagement of women (particularly at a community level) in disaster preparedness and response, disaggregated data collection in disaster management, and integration of gender in risk assessment. It does not however make any specific provisions for SRHiE or GBViE nor does the newly launched *National policy on Family Safety*: *Elimination of Family Violence 2021-2031*.

Similarly to the MISP, there are currently no formal policy commitments to the Interagency Minimum Standards for Prevention and Response to Gender-based Violence in Emergencies. Notwithstanding this, in 2021 the GoS launched the *Samoa Inter-agency Essential Services Guide (IESG) for Responding to Gender-Based Violence and for Child Protection (MWCSD, 2021).* This guide is intended to be used in non-emergency as well as emergency settings, however it does acknowledge that special considerations will need to be taken into account for each context and it does not tailor the guidelines specifically to the unique complexities that exist within emergency settings. While GBViE is not specifically addressed in the *National policy on Family Safety: Elimination of Family Violence 2021-2031*, it does provide the broad scope under Priority Area 3 to do so through strengthening cross sector partnerships, developing standard operating procedures and establishing a framework of essential services.

The authors are aware that at the time of writing, a *Standard Operating Procedures for Clinical Management of Rape Sexual Violence and Gender-based Violence* has undergone validation and official launch with the Ministry of Health. This Standard Operating Procedures (SOP) draws from the WHO's 2019 training curriculum that uses the recommendations from the WHO Clinical handbook: *Healthcare for women subjected to intimate partner violence or sexual violence.* The SOP presents clear procedures, roles, and responsibilities for healthcare providers in primary, secondary and tertiary level healthcare facilities in Samoa. The SOP includes an Annex on GBViE standards including MISP.

While the NDMP states that the UN Office for the Coordination of Humanitarian Assistance (UNOCHA) cluster system has been incorporated at a national level to fit within the existing national disaster structure, it may be worth reviewing the extent to which the national cluster system has been localised in partnership with traditional UN leads and the extent to which a gender transformative approach is being taken to relevant clusters and sub-clusters or committees that provide this function and the general readiness of cluster members to work towards minimum standards. It appears that multi-sector collaboration and governance in GBV is emergent in Samoa and that any response to GBViE will need to continue to link into regional cluster arrangements, such as the Regional Pacific Humanitarian Protection Cluster (PHPC) Support Team and support alongside emerging national and sub national committees and local actors.[11] The Gender-Based Violence in Emergencies sub-cluster (co-led by UN Women and UNFPA) is based in Fiji.

It is encouraging that MISP training has been delivered and it appears from this review there is an opportunity to improve access to SRHiE and the overall response to and prevention of GBViE in Samoa. This includes ensuring minimum service standards in emergencies are explicitly endorsed and contextualized in cross cutting and sector specific legislation, policy and guidance. Given the frequency of disaster, the impact of climate change and the role of all agencies in humanitarian responses, the need to link to long-term development is critical. This will require cohesive policy and legislative frameworks to enable all actors to continue to work together to avoid long term inter-generational inequality and exclusion. There is an opportunity to draw on international and regional commitments, such as KAILA, already made and explicitly commit to MISP, Essential Services standards and GBViE standards within the Ministry of Health and Ministry of Women, Community and Social Development disaster management and sector specific plans and SOPs.

11 UNFPA is mandated to lead the GBV Area of Responsibility (GBV AoR), a subsidiary body of the Global Protection Cluster, which is led by UNHCR. UNFPA is accountable for working closely with national authorities, partners and communities, to ensure that minimum standards are in place to prevent and respond to gender-based violence in emergencies. In non-clustered and refugee contexts, UNFPA's coordination role may vary depending on the particular emergency context, presence of other UN agencies and existing local capacity.

8 Conclusions and recommendations

This desk review has revealed that Samoa has made good progress towards creating an enabling legislative and policy environment for universal access to SRH and prevention and protection from GBV.

It is important to recognise that ensuring accountability for the full implementation of existing laws and policies is as critical as developing new legislation and policies to support SRHR and eliminate GBV. Accountability should be in the form of sound M&E frameworks and regular data collection, periodic review against indicators, timely and comprehensive reporting on international commitments.

Based on this preliminary desk review, several opportunities to strengthen policy and legislative responses include:

8.1. General recommendations

- Ensure that any future legislative reform is approached comprehensively and involves consultation with civil society and key population groups, including gender impact assessment to understand possible unintended consequences.

- Consider reviewing the *Constitution*, ensuring it:
  - Aligns with Samoa's obligations as a signatory to international human rights treaties and conventions, specifically CEDAW, CRC and the CRPD.
  - Includes a commitment to the principle of gender equality.
  - Protects against discrimination based on sex, gender/gender identity, sexual orientation, age, disability, marital status, and health status.
  - Provides an enabling environment for the recognition to the right to health generally and of SRHR for all specifically.

- Scope the feasibility of a gender equality and inclusion bill that requires a positive obligation to promote structural gender equality and a removal of current legislative discrimination based on gender, age, sex, status, occupation, disability, and identity. Consider Gender in Emergencies and requiring all public entities to embed gender transformative and inclusive disaster preparedness, climate change resilience and response into their policies.

- In line with National Policy on Disability 2021-2031 targets, harmonise Samoa laws with the CRPD through developing a disability bill for Samoa. This should enshrine the right to live free from violence and the right to SRHR (including reproductive choice).

- Conduct further research in partnership with persons with disabilities in Samoa to identify barriers related to SRHR and GBV to inform future law reform and policy development.

- Ensure institutional mechanisms are resourced to allow effective planning, implementation, monitoring and review of SRH and GBV law and policy including the Ministry of Health and Ministry of Women, Community and Social Development coordination bodies (e.g. the EVAW Taskforce) and monitoring bodies (Samoa Law Reform Committee and National Human Rights Institution).

- Strengthen data collection mechanisms to support monitoring and evaluation of policy and implementation to ensure annual targets are met and allow evidence-based reform.

8.2. SRHR recommendations

- Consider legislating for guaranteed access to contraception (including emergency contraception); family planning and maternal health services; and voluntary HIV & STI testing, counselling and treatment; with a specific directive on ensuring access for adolescents and youthand marginalised population groups. Legislation should include provision for full, free, and informed consent for services taking into consideration the evolving capacity of adolescents in line with international best practice.

- For future iterations of the National SRH Policy, consider incorporating:
  - A definition of comprehensive integrated SRH in line with the ICPD (for example the Guttmacher-Lancer Commission)
  - Specific provisions for key populations adolescents and youth, people with disabilities, LGBTIQ communities and sex workers, recognising the unique barriers they experience to accessing SRHR
  - Ensure that the policy clearly links to SRHiE acknowledging the importance of prepositioning and long-term preparedness, including the ability to pivot from ongoing integrated SRHR services to initial SRH services in emergencies (e.g. MISP)
  - Evidence based resourcing (e.g. health readiness assessments)
  - Recognise the important role of non-government organisations and ensure sustainable partnerships in the delivery of SRH services

- Review and develop new clinical guidelines on obtaining full, free, and informed consent for SRH health services providing consistency across services and facilities. Develop a resource for health professionals to use to assess children's competence to consent to treatments; provide training for children, parents, and health professionals to raise awareness and knowledge of the law; and consider introducing a new law to better embed the rights of competent children to consent, or refuse, treatment.

- Conduct further research into the impact, causes and consequences of unsafe abortion practices. Legislate for access to post abortion care regardless of the legality of abortion ensuring that women are not liable to prosecution.

- Review and develop new clinical guidelines on the delivery of safe abortion services to the full extent of the law, providing consistency across services and facilities (including facility readiness, risk assessment, counselling, referral, obligations and rights). Develop a resource for health facilities to use to provide training for health professionals to raise awareness and knowledge of the law.

- Review the *Labour and Employment Relations Act 2013* and consider revising section 44 to align it with the Public Service Commission's Working Conditions and Entitlements Policy and CEDAW by extending maternity leave in the private sector to 12 weeks. Paternity leave under the act should also be reviewed and increased to promote shared caring responsibilities between men and women. Further strengthen this by exploring the introduction of childcare options for all.

- Consider reviewing and legislating that CSE must be integrated into national curriculum and include minimum requirements for topics including drivers of gender inequality.

- Conduct further research on access to SRHR to inform evidence-based policy and decision making, including on the following issues:
  - The causes for the increase in maternal mortality. Consider changing the indicator used in relation to maternal mortality from MMR to monitoring the absolute number of deaths annually, to enhance the ability to track change over time
  - The unmet need for family planning and low rates of contraceptive use
  - The SRH needs of sex workers and the barriers they face in accessing services

- Revisit previous Samoa Law Reform Commission recommendations to review and repeal all criminal penalties and provisions that may be applied to criminalising sexual activity between consenting adults and adopt appropriate legislative measures to include sexual orientation and gender identity in equality and non-discrimination laws.

- Ensure adequate financing is built into policy to achieve universal access to SRH and dedicated workforce allocation to SRH service delivery.

- Strengthen partnerships with faith communities in relation to youth SRHR and family life education and include this in policy targets. This could include gender training at theological institutions and partnering in delivering SRH messages.

8.3. GBV recommendations

- To build off the new policies and plans developed by the Ministry of Women, Community and Social Development in 2021, ensure that interagency coordinating mechanisms are adequately resourced (budget and HR) and formalised (through an agreement). Strengthen the implementation plan or develop a 10-year action plan (gender-based violence) with a clear roadmap separating immediate action from longer term objectives. Early priorities should be:
  - engaging key stakeholders and agencies in planning targets and delegation of responsibilities under the national action plan;
  - establishing a formal agreement and mechanism under which key partners can deliver a comprehensive, multisectoral response to family violence that builds in accountability for minimum services standards and reporting;
  - Map and establish referral pathways in line with the IESG;
  - Establish an agreement around information sharing (consider legislating this in the future) maintaining victim/survivor safety and confidentiality;
  - Under the agreement establish a mechanism for data collection (minimum data set/ standardised forms, database);
  - Consider developing a sector wide risk management framework;
  - Consider establishing a sector capability framework under the national plan to set minimum training requirements across the sector (for specialist family violence roles, front line health workers, police, judiciary, village councils).

- Consider further research into trafficking, sexual exploitation, and prostitution in Samoa to inform evidence-based policy and legislation. Action signing of 'Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children', supplementing the United Nations Convention against Transnational Organized Crime.

- Address harmful interpretations of fa'a-Samoa in relation to gender roles and gendered violence in SRH, health and GBV policy, particularly in light of renewed focus on fa'a-Samoa in delivery of primary health care.

- Review the *Family Safety Act 2013* and broaden the definition of violence to include 'economic violence' in line with recommendations out of the National Public Inquiry into Family Violence, FSS and CEDAW reporting mechanisms.

- Review provisions in the *Family Safety Act 2013, the Community Justice Act 2008* and the *Evidence Act 2015* that allow factors to be taken into consideration by the judiciary when sentencing in cases of GBV, such as gender stereotypes and traditional apology (ifoga).

- Consider revising the *Crimes Act 2013* to bring the narrow definition or 'rape' in line with the definition of 'sexual connection'.

- Review mediation or alternative dispute resolution processes in the current legislative framework alongside traditional mediation and ensure there are explicit protections in place in cases of domestic violence.

- Urgently progress the Child Care and Protection Bill 2013 through the Legislative Assembly.

- Revise the *Marriage Ordinance Act 1961* to legislate the equal minimum age of 18 for marriage requiring full, free, and informed consent of both parties to the marriage.

- Urgently roll out the Ministry of Health *Standard Operating Procedures for Clinical Management of Rape Sexual Violence and Gender-based Violence.*

- Ensure the Taiala mo Auaunaga Fesoasoani mo Mataupu tau Puipuiga o Fanau (IESG) is formally recognised and mandated in relevant cross cutting health, GBV and related policy.

8.4. Humanitarian and disaster recommendations

- Ensure there are specific provisions in relevant health and disaster policy and legislation to require the MISP objectives and related indicators to be embedded. Ensure this is situated in broader health policy that strengthens health systems as part of SRH preparedness and readiness. Continue to strengthen the sexual and reproductive health system in Samoa as a basis for SRHiE preparedness and address urgent identified gaps in capacity, investment and commodity supply.

- Ensure GBViE standards are embedded in policy and legislative frameworks and national cluster guidance to specific actors providing ongoing lifesaving services. Ensure new policies (including the National Policy on Family Safety: Elimination of Family Violence) embed GBV in emergencies in relevant action plans. This should include government and non-government services. Include measures targeting the Prevention of Sexual Exploitation, Abuse and Harassment (PSEAH) in emergency contexts, including of and by workers in the response.

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Annex 1: Desk review search terms

Samoa

AND “fertility”	OR “SRH”	OR “Gender-based violence”
OR “Maternal mortality”	OR “Reproductive health”	OR “Violence against women”
OR “Matern* health”	OR “Sexual health”	OR “Domestic violence”
OR “Matern* leave”	OR “Contracept*”	OR “Intimate partner violence”
OR “Patern* leave”	OR “Abortion”	OR “Family violence”
OR “Pregnancy”	OR “Family planning”	OR “Trafficking”
OR “Childbirth”	OR “Sex* education”	OR “Sex work”
OR “Skilled birth attendan*”	OR “Sex* curriculum”	OR “Early marriage”
OR “Life-saving commodit*”	OR “Family Life education”	OR “Forced marriage”
OR “Life-saving medicine*”	OR “AIDS”	OR “Child marriage”
OR “HPV”	OR “HIV”	OR “Female genital mutilation”
OR “Discrimination”	OR “Gender”	OR “Female genital cutting”
OR “Plural legal system”	OR “Disability”	

Annex 2: Integrated sexual and reproductive health and rights

Guttmacher-Lancet Commission
Integrated sexual and reproductive health and rights

Sexual and reproductive health is a state of physical, emotional, mental, and social wellbeing in relation to all aspects of sexuality and reproduction, not merely the absence of disease, dysfunction, or infirmity. Therefore, a positive approach to sexuality and reproduction should recognise the part played by pleasurable sexual relationships, trust, and communication in the promotion of self-esteem and overall wellbeing. All individuals have a right to make decisions governing their bodies and to access services that support that right. Achievement of sexual and reproductive health relies on the realisation of sexual and reproductive rights, which are based on the human rights of all individuals to:

- have their bodily integrity, privacy, and personal autonomy respected;
- freely define their own sexuality, including sexual orientation and gender identity and expression;
- decide whether and when to be sexually active;
- choose their sexual partners;
- have safe and pleasurable sexual experiences;
- decide whether, when, and whom to marry;
- decide whether, when, and by what means to have a child or children, and how many children to have;
- have access over their lifetimes to the information, resources, services, and support necessary to achieve all the above, free from discrimination, coercion, exploitation, and violence.

Essential sexual and reproductive health services must meet public health and human rights standards, including the “Availability, Accessibility, Acceptability, and Quality” framework of the right to health.

The services should include:

- accurate information and counselling on sexual and reproductive health, including evidence-based, comprehensive sexuality education;
- information, counselling, and care related to sexual function and satisfaction;
- prevention, detection, and management of sexual and gender-based violence and coercion;
- a choice of safe and effective contraceptive methods;
- safe and effective antenatal, childbirth, and postnatal care;
- safe and effective abortion services and care;
- prevention, management, and treatment of infertility;
- prevention, detection, and treatment of sexually transmitted infections, including HIV, and of reproductive tract infections; and
- prevention, detection, and treatment of reproductive cancers.

Source: Starrs, et al. (2018). Accelerate progress - sexual and reproductive health and rights for all: report of the Guttmacher-Lancer Commission. The Lancet Commissions. 391(10140) 2642-2692.