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Cook Islands Gender Equality Policy Analysis

Implementing the National Gender
Equality Policy in the Cook Islands



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COOK ISLANDS GENDER EQUALITY AND WOMEN'S EMPOWERMENT
PROJECT 2014-15 (EDITOR – MAUREEN HILYARD)

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IMPLEMENTING THE NATIONAL GENDER EQUALITY POLICY IN THE COOK ISLANDS:

GENDER POLICY ANALYSIS

1. BACKGROUND

The Gender Project is an Australia Aid Funded project which came out of their “Pacific Women Shaping Pacific Development” Delivery Strategy (2012). It is supported by the “Pacific Leaders Gender Equality Declaration” from the Pacific Islands Forum Secretariat, 2012, and by the “Cook Islands National Policy on Gender Equality and Women’s Empowerment and Strategic Plan of Action 2011-2016

The main objective of this component of the project is to strengthen capacity for gender responsive development towards an enabling environment for the full participation of women in economic development. The programme aims to strengthen capacity to identify new economic opportunities for women; promote and support women’s businesses in both the formal and informal sectors; support women’s access to financial services and other productive assets for the development of their enterprises; and support the integration of women living with disability in socio-economic development. By doing so, strengthening capacity will help to increase benefits from new livelihood options and economic opportunities for women and women will have increased access to productive assets.

2. OBJECTIVES OF THE RESEARCH REPORT

- To provide a comprehensive gender-sensitive analysis of the policies of government agencies and private sector organisations to ascertain their concurrence with the National Gender Equality Policy.
- Review of the government’s Code of Conduct – in relation to Gender Equality and Women’s Empowerment (GEWE)
- Gender sensitive language constructs (i.e. gender neutral language) and provide definitions of the Gender Concepts
- Review existing documents
- As assessment report of current knowledge of government officials, private sector partners and NGO partners on national policies on gender sensitivity
- Identify any policy gaps that should be incorporated into workplaces – for example, gender equality and anti-harassment policies.

- ❑ A set of recommendations will be expected to address any identified challenges, limitations and possible solutions.

3. METHODOLOGY

- 3.1 The assignments will be performed in collaboration with Maureen Hilyard, the Gender Programme Coordinator
- 3.2 Desktop research, meetings, consultations and interviews with key stakeholders in the public and private sector and policy makers as needed for the development of this analysis.
- 3.3 The National Policy Division is the first point of contact with regards to any discussion with government policies and their compliance with the National Gender Equality Policy.
- 3.4 Desk Review: Identified documents used as a baseline for assessment: GEWE, Gender Stocktake, Gender Profile, SPC Gender Training 2012; Concluding Comments of the CEDAW Committee: Cook Islands¹; Beijing +15 and Beijing +20 (2014), Convention on People with Disabilities, the Convention on the Rights of the Child NGO parallel report, Indicators of the economic empowerment of women in the Cook Islands (2012); Roadmap for Cook Islands National Strategy for the Development of Statistics (CINSDS) 2013, other tools and documents listed in references.
- 3.5 Acknowledgements: In compiling this report, material has been adapted from a number of sources and we are appreciative to the authors of this work. All sources are listed in the bibliography at the end of the Report. You are encouraged to use the information in this report freely but acknowledgement to MINTAFF- GADD must be made.

4 RATIONALE FOR THE ANALYSIS OF THE POLICIES

- 4.1 The Gender Stocktake² recognises that effective mainstreaming of gender and women's human rights requires a strong legal and policy framework, political commitment, a supportive organisational culture, accountability and responsibility, technical capacity and adequate resources across the whole of government. There is a critical lack of knowledge and understanding of gender issues, gender mainstreaming, the legal and policy frameworks, information and political commitments to human rights, gender equality and women's empowerment.

¹ CEDAW/C/COK/CO/1 – 10 August 2007

² SPC – Secretariat of the Pacific Community - Stocktake of the gender mainstreaming capacity of Pacific Island governments – Cook Islands 2012

- 4.2 This review highlights commitments to CEDAW, the Beijing Declaration and Platform for Action, the Pacific Platform for Action, the Millennium Declaration and Millennium Development Goals, The Aid Effectiveness Agenda , the Pacific Plan, The Samoa Pathways, the National Sustainable Development Plan (NSDP) and the National Gender Equality and Women’s Empowerment Policy and Five Year Strategic Plan of Action (2011-2016).
- 4.3 The availability of and access to information is an important pre-requisite in order for people to be more effective in participating in the development and administration of laws and policies. Access to and the dissemination of information, reports and accurate data in relation to the effective implementation of the GEWE, the CEDAW, Beijing Platform and other human rights obligations, should be made available from the GADD Division, to support on-going research, identifying current issues and constraints in different spheres, such as that of women in decision-making, women’s economic rights and violence against women, and on the current status of men and women. Lack of access to information can impede efforts in the implementation of CEDAW, the GEWE and at gender mainstreaming. Without access to information, individuals are disempowered – rendered incapable of influencing decisions that affect them³.
- 4.4 The *Official Information Act (OIA) 2008* provides all people living in the Cook Islands rights to access public documents and official information including information held about themselves. It has the purpose (a) to increase the availability of official information to the people of the Cook Islands in order to enable their more effective participation in the development and administration of laws and policies.
- 4.5 Further purposes of the OIA are, where consistent with the principle of the Executive Government's responsibility to Parliament - *(a)(i) to enable their more effective participation in the making and administration of laws and policies; and (ii) to promote the accountability of Ministers of the Crown and officials, and thereby to enhance respect for the law and to promote the good government of the Cook Islands; (b) to provide for proper access by each person to official information relating to that person; (c) to protect official information to the extent consistent with the public interest and the preservation of personal privacy.*

³ Human Rights and the Millennium Development Goals – Making the Link p. 23

4.6 The Cook Islands National Policy on Gender Equality and Women's empowerment (GEWE) & Strategic Plan of Action, 2011-2016 and the CEDAW Committee's Concluding Comments have not been circulated to government ministries therefore neither document has been used to inform development and sector policies and plans. Institutional memory on the CEDAW and Beijing Declaration and Platform for Action has faded with the passing of a generation of women and the new generation of both men and women are unaware of the historical significance of those two documents and their relevancy today.

CEDAW Committee's Concluding Comment Para 46

- The Committee requests the wide dissemination in the Cook Islands of the present concluding comments in order to make the people, including government officials, politicians, parliamentarians and women's and human rights organisations, aware of the steps that have been taken to ensure de jure and de facto equality of women, and the further steps that are required in that regard.
- The Committee requests the Cook Islands to continue to disseminate widely, in particular to women's and human rights organizations, the Convention, its Optional Protocol, the Committee's general recommendations, the Beijing Declaration and Platform for Action and the outcome of the twenty-third special session of the General Assembly, entitled "Women 2000: gender equality, development and peace in the twenty-first century".

4.7 Comprehensive, non-discriminatory legal frameworks, based on international human rights law and standards, are the necessary foundation for social justice and human rights for all and the promotion of social and economic equality that leads to gender equality and women's empowerment.

4.8 Legal frameworks are in place by existence of constitutional and legislative provisions, the existence of government policy mandates and by virtue of ratification or accession of relevant international human rights treaties to strengthen capacity for gender responsive development towards an enabling environment to empower women's full participation in economic development. An important pre-requisite is a strong political will to promote human rights, gender equality, non-discrimination, social and economic equality to ensure that gender equality and women's rights are explicit in every sector.

4.9 The Cook Islands has made significant commitments to gender equality, non-discrimination and women's empowerment under the Convention on the Elimination of all Forms of Discrimination

against Women (CEDAW) and other United Nations treaties and instruments and other international and regional policy frameworks. The Cook Islands government reaffirmed its commitment to Gender Equality and non-discrimination when it acceded to CEDAW in its own right in 2006.

5 BACKGROUND

5.1 BEIJING DECLARATION AND PLATFORM FOR ACTION

- 5.1.1 The Beijing Declaration and Platform for Action was adopted at the 1995 Fourth World Conference on Women. The Platform is the defining policy framework and roadmap for achieving gender equality and women's rights and for achieving the CEDAW objectives. It reaffirms the fundamental principle that women and girls are an "inalienable, integral and indivisible part of universal human rights". The Platform for Action calls upon governments to take action to address 12 critical areas of concern, among them violence against women. The Platform for Action states, "Violence against women is an obstacle to the achievement of the objectives of equality, development and peace." Women in decision making and economic actions are also referred to in the Beijing Platform for Action.
- 5.1.2 The Beijing conference identified gender mainstreaming as a strategy for the achievement of gender equality. The Beijing Platform for Action defines gender mainstreaming as the integration "*of a gender perspective into all policies and programmes so that, before decisions are taken, an analysis is made of the effects on women and men respectively*". Women's organisations have stressed the need to link the Beijing Platform for Action and the Millennium Development Goals (MDGs) set by governments in 2002, which seeks to eliminate global poverty by 2015.
- 5.1.3 The Cook Islands Government, together with NGOs endorsed and signed up to the commitments flowing from the four UN world conferences on women in 1975, 1980, 1985 and the Fourth World Conference on Women, held in Beijing in 1995, which progressively developed strategies outlined in the Beijing Declaration and Platform for Action for achieving the CEDAW objectives.
- 5.1.4 The national women's machinery (GADD) and the national women's policy are actions from the Beijing Platform. The Cook Islands have completed reports on the implementation of the Beijing Platform for Action every 5 years (Beijing +5, Beijing +10, Beijing +15. The next

report Beijing +20 is due in 2015, and takes place at a historical moment when major international efforts are underway to advance human rights and development and the global community is considering a post-2015 development agenda when the MDGs reach their endpoint⁴.

- 1.1.5. The implementation of the GEWE, gender equality policies and gender mainstreaming should be the responsibility of every Ministry and government agency, and not solely the responsibility of the national machinery (GADD). The GADD has been entrusted with the responsibility of co-ordinating the implementation of mainstreaming policies.

CEDAW Committee's Concluding Comment para. 43

The Committee urges the Cook Islands to utilize fully in its implementation of the obligations under the Convention the Beijing Declaration and Platform for Action, which reinforce the provisions of the Convention, and requests the Cook Islands to include information thereon in its next periodic report.

Para. 44 – The Committee also emphasizes that the full and effective implementation of the Convention is indispensable for achieving the Millennium Development Goals. It calls for the integration of a gender perspective and the explicit reflection of the provisions of the Convention in all efforts aimed at the achievement of the Millennium Development Goals and requests the Cook Islands to include information thereon in its next periodic report.

5.2 CABINET APPROVES THE NATIONAL POLICY ON GENDER EQUALITY AND WOMEN'S EMPOWERMENT

- 5.2.1 On 21 June 2011, CM (11) 0236 Paper dated 24 May 2011, submitted by the Minister of Internal Affairs, with the recommendation: Cabinet approve the National Policy on Gender Equality and Women's Empowerment (GEWE), together with the 5 year Strategic Plan of Action 2011-2016. Cabinet approved GEWE and the five year strategic plan of action (2011-2016). With the following comments:

- This proposal is fully supported. (Chief of Staff, OPM); Undertaking initiatives within existing resources or seeking donor assistance is encouraged.
- Proposal is supported. (Acting Financial Secretary, MFEM);

⁴ UN Women, www.un.org/womenwatch

- ❑ Legal issue are already undergoing review under the Family Law Bill and Crimes Bill. Supported. (Solicitor General).
- ❑ The ratio of men to women in the public service is very encouraging and this policy reinforces the value of women’s empowerment to the Public Service (Acting PS Commissioner). Supported.

The Cabinet Minute also noted the following:

Legislative Implications: There are direct legislative implications from the endorsement of this policy. Government has, however, already committed to a programme of law reform following its report on compliance with CEDAW.

- **Agreed Costing:** The implementation of the policy and the strategic plan will be done within existing resources and supplemented by donor assistance for specific projects where necessary.
- **Social Impacts:** the Implementation of this policy is expected to generate positive social impacts by encouraging greater participation of women in society. Consideration for impacts on the environment will also be included given a key priority area relates to women and climate change.

5.2.2 CAC (01) 152 dated 27 May 2011: the Central Agencies Committee (CAC) Meeting: The National Policy on Gender Equality and Women’s Empowerment and the Five Year Strategic Plan of Action (2011-2016). Supported the paper, as recommended. Committee Members in attendance, Chief of Staff, OPM (Chairman), Solicitor General, Crown Law Office, Acting Financial Secretary (MFEM) and Secretary to Cabinet Services.

5.3 THE COOK ISLANDS NATIONAL POLICY ON GENDER EQUALITY AND WOMEN’S EMPOWERMENT (GEWE) & STRATEGIC PLAN OF ACTION, 2011-2016 (endorsed by Cabinet).

5.3.1 The goal of the policy is “to advance gender equality and enhance women’s empowerment ensuring the active contribution and meaningful participation of both Cook Islands women and men in all spheres and at all levels of development and decision making.’

5.3.2 The GEWE recognizes that women and men are equal partners in the development of the Cook Islands, and places gender equality at the heart of economic and social progress, giving equal value to the roles and responsibilities of Cook Islands’ women and men. It also

recognises that in order to redress gender inequalities it is necessary to create the conditions for women's empowerment while women and men work together to address attitudinal and institutional barriers to gender equality.

5.3.3 The aim of the GEWE is to guide the Cook Islands Government in implementing and monitoring its commitments to advancing gender equality and the empowerment of women. The policy is also a tool for dialogue with different sectors and agencies to achieve the following objectives.

- Define agreed priorities for empowering women and achieve gender equality goal;
- Create an enabling environment for translating Government commitment to gender equality and women's human rights into reality;
- Align national plans to implement Government's international and regional commitments on gender equality and women's empowerment.
- Define a mechanism for monitoring and reporting on the progress in line with the Cook Islands commitments to regional and international state obligations.

5.3.4 The five year Strategic Plan of Action proposes a series of outputs and key actions in order to achieve the outcomes of the National Policy on Gender Equality and Women's Empowerment. Its implementation requires the active involvement and contribution of the government and the civil society organisations.

5.3.5 The outcomes and outputs proposed have to be incorporated and addressed in the national policy and programs in every sector and need to be part of annual plans. The Policy six priority outcomes sought over the first five years of this plan (2011-2016) are:

- Gender-responsive Government programs and policies
- Equitable participation of women and men in decision-making and governance systems
- Enabling environment for the full participation of women in economic development
- Improved capacity of women to contribute to climate change adaptation strategies
- Improved capacity of women to address health issues
- Elimination of violence against Women

5.3.6 The following actions are proposed in the Policy for increasing the capacity of the government to effectively address the remaining gender issues and achieve gender equality:

- Embed CEDAW articles into legislative and statutory reforms and policy initiatives across government.
- Initiate research on relevant issues related to gender equality and women's human rights
- Support the production and use of sex disaggregated data and gender analysis to inform government's policies and programs
- Mainstream gender into all government policies, programs and services including the outer Islands
- Strengthen the capacity of government officials and managers on mainstreaming gender equality
- Strengthen the role of coordination, advisory, and technical support of GADD
- Monitor the advancement of gender equality and human rights at all levels and in each sector
- Monitor the impacts of government policies and programs on gender equality and women's human rights

5.4 CONSISTENCY WITH NATIONAL PRIORITIES

5.4.1 The review of the National Policy on Women and the endorsement of the National Policy on Gender Equality and Women's Empowerment are consistent with the national priorities as identified in the 2007-2010 National Sustainable Development Plan (NSDP). Priorities identified include:

- Endorse and Implement the National Policy on Gender by the end of 2007
- Review and update the National Policy on Women by the end of 2007
- Integrate Gender equality policies into all sectoral plans by 2010
- Achieve equitable remuneration scale and career advancement in all sectors
- Increase the number of businesses owned or co-owned by women

The Committee calls upon the Cook Islands to strengthen the structural arrangements of the national machinery for the advancement of women, both vertically and horizontally, and provide it with the authority, decision-making power and human and financial resources that are necessary for it to work effectively for the promotion of equality of women and the enjoyment of their human rights. The Committee also recommends that the Cook Islands work with international donors and the United Nations system to develop the national machinery's capacity to coordinate the use of the gender mainstreaming strategy across all sectors and levels of government, including through the use of gender-responsive budgeting processes.

6. INTERNATIONAL HUMAN RIGHTS LAW – CONVENTIONS AND INSTRUMENTS

6.1 COOK ISLANDS ACCEDES TO CEDAW IN ITS OWN RIGHT

6.1.1 On 11 August 2006 the Cook Islands acceded to CEDAW in its own right. The country withdrew its reservations on Article 11 (2) (b) maternity leave provisions; Articles 2 (f) and 5 (a) with regard to inheritance of chiefly titles; and in general as regards recruitment and service of women in the armed forces. Countries that have ratified or acceded to conventions are legally bound to put its provisions into policy and practice and to report to the treaty monitoring bodies every four (4) years on progress of implementation.

CEDAW Committee's Concluding comment - para. 5.

The Committee commends the Cook Islands for its withdrawal, effected on 30 July 2007, of all reservations held upon accession, namely to article 11 (2) (b) on the provision of maternity leave; articles 2 (f) and 5(a) with regard to inheritance of chiefly titles; and in general as regards recruitment and service of women in the armed forces.

6.2 First Report to the CEDAW Committee

6.2.1 In August 2007, the Cook Islands presented its first report to the CEDAW Committee, In the initial report on the implementation of CEDAW, Government acknowledges the advancement of women is a cross-cutting issue in all its work.

6.2.2 In the Concluding Comments para. 2 Cook Islands was commended for its accession to the Convention in its own right on 11 August 2006, while noting its accession to the Convention in 1985 through territorial application under New Zealand. Further, it expressed its

appreciation for the quality and timely submission, of its initial report, while noting that it does not refer to the Committee's general recommendations. It noted that the report was prepared in a broad-based consultative process with the participation of government bodies, non-governmental organizations and Cook Islands women.

- 6.2.3 The Committee recalls the Cook Island's obligation to systematically and continuously implement all the provisions of the Convention, the Committee views the concerns and recommendations identified in the present concluding comments as requiring priority attention between now [2007] and the submission of the next periodic report [due 2011]⁵.

CEDAW Committee's Concluding Comment – para. 9.

- The Committee calls upon the Cook Islands to focus on those areas in its implementation activities and to report on action taken in its next periodic report. It calls on the Cook Islands to submit the present concluding comments to all relevant ministries and to Parliament so as to ensure their full implementation.

- 6.2.4 The Cook Islands delegation met with the CEDAW committee on Friday 6 August 2007 and an information paper was prepared by the Ministry of Foreign Affairs and submitted to Cabinet by the Minister of Foreign Affairs and Immigration, the Hon. Wilkie Rasmussen.

- 6.2.5 The Cabinet Minute 3 August 2007 (CM (07) 505) noted the concluding comments, with the view that it will be implemented by the respective Government agencies and Ministries.

The Cabinet Information paper also noted the Next Steps:

The Ministry of Internal Affairs and Social Services will call a meeting of all the HOMs of the following Government Ministries to provide to them a copy of the concluding comments with the view that it will be implemented by the respective Government agencies and Ministries: Crown Law, Education, Finance, Foreign Affairs & Immigration, Health, Justice, Office of the Prime Minister, Office of the Minister of Island Administration, and Police.

The Ministry will also hold a meeting with NGOs to determine their role in assisting Government implement the Convention in the Cook Islands.

⁵ CEDAW Committee Concluding Comment – para.9

In the CEDAW Committee's concluding comments, para 42⁶.

The Committee encourages the Cook Islands to ratify the Optional Protocol to the CEDAW and to accept, as soon as possible, the amendment to article 20, paragraph 1, of the Convention concerning the meeting time of the Committee.

- 6.2.6 At a Cabinet Meeting, on 4 September 2007, CM (07) 503, a paper dated 24 July 2007 was submitted by the Minister of Foreign Affairs and Immigration. Cabinet approved:
- a. Accession to the Optional Protocol to the Convention on the Elimination of All Forms of Discrimination Against Women
 - b. Accession to the amendment to Article 20 of the Convention on the Elimination of All Forms of Discrimination Against Women; and
 - c. The Ministry of Foreign Affairs and Immigration to prepare and deposit the Instrument of Accession.

Cabinet noted

Contribution: Accession to the Optional Protocol will not require Government to make any financial contributions. In order for the Cook Islands to meet its obligations and commitments under the Convention, the Gender and Development Division will be responsible for the administrative requirements of the Convention as an output under Sector Goal of the 2007/2008 Budget. The Optional Protocol of CEDAW gives Cook Islands women the right to take a complaint of discrimination to the United Nations, if all domestic remedies have been exhausted.

- 6.2.7 On 4 September 2007, CM (07) 505 Paper dated 28 August 2007, submitted by the Minister of Foreign Affairs and Immigration: the Information Paper on the 39th Session United Nations Committee on the Elimination of Discrimination Against Women held in New York, 3 August 2007 and proposed that Cabinet:
- d. Receive the Information Paper; and

⁶ UN CEDAW, Concluding comments of the Committee on CEDAW, 10 August 2007

- e. Note the Concluding Comments, with the view that it will be implemented by the respective Government agencies and Ministries.
- f. **Fiscal Responsibility** noted: there is no fiscal responsibility on the part of Government in receiving this Information Paper. Nevertheless, it should be noted that there may be fiscal implications in the implementation of some of the Concluding Comments.

The CEDAW Committee's Concluding Comment para.9

"calls on the Cook Islands to submit the present concluding comments to all relevant ministries and to Parliament so as to ensure their full implementation".

- ❑ During the undertaking of this report, a request to GADD for information; *"Is there a minute or circular informing all government ministries of the CEDAW Concluding remarks for implementation?"* Response from the GADD Director - *"there is no minute advising or informing them to incorporate any implementation of the convention into their divisions policies".*

6.3 ACCOUNTABILITY MECHANISMS

- 6.3.2 Accountability is one of the fundamentals of the international human rights framework. Human Rights treaties come with accountability mechanisms and governments are required to report every four years to the UN treaty bodies (e.g. CEDAW Committee). Accountability for the implementation of CEDAW, Beijing and other conventions, including gender mainstreaming lies with public officials at all levels and in all Government Ministries and Government Entities.

CEDAW Committee's Concluding Comment para 47

The Committee requests the Cook Islands to respond to the concerns expressed in the present concluding comments in its next periodic report under article 18 of the Convention, which is due in September 2011.

- 6.3.3 The MDGs represent another mechanism for assessing progress and holding stakeholders accountable towards their political commitments. MDGs provide an important tool for

consolidating government and civil society efforts around the set of clearly outlined goals, targets and indicators. This allows up-scaling gender concerns, which have been already identified in CEDAW and Beijing documents, to the higher policy level.

- 6.3.4 In light of the attention that is being accorded by government to the recommendations and Concluding Comments by the CEDAW Committee, reporting mechanisms are an effective tool for assessing progress and holding governments accountable towards their political commitments.

7. LAW REFORM COMMISSION

7.1 The Law Reform Commission was established by the Law Commission Act 2007, to carry out the law reform process, in areas in need of reform identified in the 2005 comprehensive review of Cook Islands legislation and its consistency with the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW)⁷. The Law Commission consists of two lawyers and the Chief Justice. There is active legislative reform occurring without the Law Commission and driven by the relevant Ministries and non-government organisations. There is no NGO representative on the Law Commission.

7.2 The Committee named amongst its reform priorities marriage and family life and the safety and security of women and children. In order to work towards consistency with CEDAW in these areas, the Committee recommended the development of a comprehensive civil Family Law Bill to replace and modernize the disparate pieces of legislation that currently govern family law in the Cook Islands⁸. The draft *Family Law Bill 2010* that seeks to ensure that all matters related to family relations included in this Bill are consistent with the Cook Islands' commitments to human rights and gender equality, and specifically to:

- (i) enact provisions consistent with the United Nations Convention on the Elimination of Discrimination against Women; and
- (ii) enact provisions consistent with the United Nations Convention on the Rights of the Child; and
- (iii) enact provisions consistent with the United Nations Convention on the Rights of Persons with Disabilities.

⁷ CEDAW Concluding comments of the CEDAW Committee, 2007

⁸ Policy Paper Advancing the implementation of CEDAW in the Cook Islands: Good Practice Approaches to Drafting a Civil Family Law Bill January 2010

7.3 The CEDAW committee commended the Cook Islands for commissioning, in 2005, a comprehensive review⁹ of the consistency of its legislation with the CEDAW, to identify areas in need of reform, which will include relevant line ministries and non-governmental representatives in consultation with the Crown Law Office, and appreciates the clear timeline for completion of the process¹⁰.

7.4 Further in the Cook Islands CEDAW Report the priorities that have been identified by the government for reform are the laws relating to: safety and security (including reform of criminal laws on sexual offences), labour and employment protections, marriage and family life, equality and protection from discrimination, and protection of vulnerable women and girls, such as those with disabilities, migrant women and Outer Islands Women¹¹.

7.5 It welcomed the establishment of a Working Group¹² to guide the implementation of the Report's recommendations and formulation of an agreed systematic programme of legislative consistency with CEDAW in conjunction with the Law Reform Committee based at the Crown Law Office. The Working Group to be comprised of the Heads of the following agencies; Crown Law Office, Education, Health, Justice, Internal Affairs, Office of the Prime Minister, Office of the Minister of Islands Administration, Police. The Gender Development Division of the Ministry of Internal Affairs provided secretariat services for the Working Group.

CEDAW Committee's Concluding Comments - Para.13

- The Committee urges the Cook Islands to give central importance to the Convention as the basis for the elimination of all forms of discrimination against women and the achievement of gender equality, and to prioritize its full incorporation into the domestic legal system.
- It encourages the Cook Islands to adhere to a clear timetable for the completion of the necessary legislative reform as a matter of urgency, so as to achieve compliance with the

⁹ The "Pathways to Development" report on Cook Islands legislation and consistency with the CEDAW dated 29 July 2005 including the implementation of the report's recommendations as contained in pages 46-48.

¹⁰ UN CEDAW, Concluding comments of the Committee on CEDAW, 10 August 2007

¹¹ Ibid, p.6

¹² (CM (07) 638, dated 30 October 2007;

Convention and the Committee's general recommendations, and to amend or repeal all discriminatory legislation and close any legislative gaps.

- It encourages the Cook Islands to generate the political will necessary for undertaking these reforms¹³.

8. CEDAW, BEIJING PLATFORM FOR ACTION AND MDGS

- 8.1 The Millennium Development Goals (MDGs) are a recommended set of development objectives with non-mandatory targets and indicators. While adopted by a large number of countries they have no legal status¹⁴. Human Rights have no dead-line for when they must be realised. However, the MDGs have an agreed time-line in which they are to be achieved – 2015. The primary focus of the MDGs' targets for gender equality was on social development. While this directed welcome attention towards improving women and girls' health and education, women's roles in and contributions to the economy were largely ignored. The MDGs and Human rights are complementary Frameworks. They share guiding principles such as participation, empowerment, national ownership. They serve as tools for reporting processes that can hold governments accountable, and most fundamentally, they share the ultimate objective of promoting human well-being and honouring the inherent dignity of all people.
- 8.2 The Millennium Declaration declares Gender equality as a Goal on its own, the MDGs represent the consolidation of such important international documents as the Beijing Platform for Action (Platform), the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), and the Cairo Conference on Population and Development (ICPD).
- 8.3 The MDGs are an entry point for up-scaling national measures towards implementation of Beijing and CEDAW commitments, not only through Goal 3 on gender equality and empowerment of women, but also by mainstreaming gender in all MDGs. Thus, the MDGs should be treated as a vehicle to further CEDAW and Beijing reaffirmation and implementation. The strategies used in the past for promoting gender equality can be up-scaled and utilized in strategies to achieve MDGs: all three processes can become mutually supportive.

¹³ CEDAW/C/COK/CO/1 – Concluding comments of the CEDAW Committee: Cook Islands, 10 August 2007

¹⁴ Human Rights and the Millennium Development Goals – Making the link

8.4 The Cook Islands Government has made progress in achieving the MDGs, Education and Health goals. However progress on MDG 3 gender equality and empowering women, has been slow and some indicators such as the proportion of seats held by women in parliament, will not be met by 2015¹⁵. Despite the high level of education, women are still underrepresented in public office and all levels of decision making.

8.5 The Eminent UN High Level Panel on the Post-2015 Development Agenda (HLP) recognises that Gender Equality matters in its own right, and as a prerequisite for the health and development of families and societies, and a driver of economic growth. The post-2015 framework should 1) retain a strong, stand-alone goal on gender equality and women’s empowerment, and 2) include gender-specific targets and indicators in the other goals.

9. PACIFIC REGIONAL CONSULTATION FOR MEMBERS OF PARLIAMENT

9.1 In 2007, the first *Pacific Regional Consultation for Members of Parliament on the Pacific Plan¹⁶, Human Rights Conventions & Standards & their Application to Domestic Law, Policy & Practice* was held in Auckland, New Zealand. There was a total of twenty-five Pacific Members of Parliament from 11 Pacific Island countries, including the Cook Islands. It is intended to be an annual consultation for Members of Parliament.

- The meeting identified that there is very little knowledge about the Pacific Plan and that the promotion, protection and realisation of human rights is connected to all Strategic Objectives in the Pacific Plan.
- It was important for legislators to have some knowledge of human rights issues when discharging their functions in lawmaking, oversight; and representation. The state has an obligation to respect, protect, promote and fulfil the human rights of the people.
- Furthermore, Government was mindful of the obligation of Forum countries under the Pacific Plan to “establish human rights mechanisms to support the implementation of Forum Principles of Good Leadership and Accountability”, as well as “support for reporting and other requirements” under human rights conventions, covenants and agreements.

¹⁵ The MDG Pacific Report 2010

¹⁶ The Pacific Plan was adopted in 2005, developed in 2004

10. THE PACIFIC PLAN

- 10.1 Good Governance, security and human rights including gender equality were a key element of the vision of Pacific Forum leaders when they adopted the Pacific Plan of Action for strengthening Regional Cooperation and Integration (the Pacific Plan) in October 2005¹⁷. The goal of the Pacific Plan is to develop a region “*respected for the quality of its governance, the sustainable management of its resources, the full observance of democratic values, and for its defence and promotion of human rights*”. The link between the Pacific Plans strategic objectives and the need to protect and promote human rights is explicitly stated. Fourteen of the strategic objectives are directly connected to provisions contained in the principal international human rights treaties. Initiative 12.5 of the Pacific Plan, explicitly promotes the ratification and implementation of international human rights treaties.¹⁸
- 10.2 The 2012 Pacific Leaders Gender Equality Declaration and the Revised Pacific Platform for Action on the Advancement of Women and Gender Equality, represent important regional commitments to gender equality. In 2012, the Pacific Leaders committed to implement specific national policy actions to advance gender equality in the areas of gender-responsive government programmes and policies, decision making, economic empowerment, ending violence against women, health and education.¹⁹ In 2014 Pacific Leaders adopted the Framework for Pacific Regionalism as its replacement, also affirms these key elements.
- 10.3 Women’s economic empowerment is part of the Forum Economic Ministers’ Meeting action plans 2012 and 2013 and the Revised Pacific Platform for Action (PPA).

11. SMALL ISLAND DEVELOPING STATES ACCELERATED MODALITIES OF ACTION (SAMOA PATHWAY)

- 11.1 At the third International Conference on Small Island Developing States (SIDS), in Samoa, from 1 -4 September 2014, the Pacific Leaders reaffirmed the importance of the Universal

¹⁷ United Nations Office of the High Commissioner for Human Rights (OHCHR) Regional Office for the Pacific. P.vii

¹⁸ Ibid. P.12

¹⁹ SPC 12 Triennial Conference of Pacific Women, Redommendations and Outcomes, (20-24 October 2013)

Declaration of Human Rights, as well as other international instruments relating to human rights and international law (in para.8).

11.2 The SAMOA Pathway (para. 76) also recognized that gender equality and women's empowerment and the full realization of human rights for women and girls have a transformative and multiplier effect on sustainable development and is a driver of economic growth in Small Island developing States. Women can be powerful agents of change. The SAMOA Pathway (para.77) expresses support for SIDS efforts to:

- a) Eliminate all forms of discrimination against women and girls.
- b) Integrate a gender perspective in priority areas for sustainable development.
- c) Strengthen women's economic empowerment and ensure equal access to full and productive employment and decent work.
- d) End all forms of violence against women and girls.
- e) Continue taking measures to ensure women's full, equal and effective participation in all fields and leadership in levels of decision making in the public and private sectors through policies and actions such as temporary special measures,²⁰ as appropriate, and by setting and working to achieve concrete goals, targets and benchmarks.
- f) Guarantee equal access to good quality education and health.
- g) Ensure in SIDS the promotion and protection of the human rights of all women and their sexual and reproductive health and reproductive rights in accordance with the Program of Action of the ICPD, the Beijing Platform for Action and the outcome documents of their review conferences.
- h) Tackle the structural and socio-economic inequalities and multiple intersecting forms of discrimination that affect women and girls, including those with disabilities that hinder progress and development.

²⁰ Also recommended for adoption in the 2012 Pacific Leaders Gender Equality Declaration, where legislation to establish reserved seats for women and political party reforms are specifically mentioned.

i) Give women equal rights with men to economic resources including access to, ownership and control over land and other forms of property, credit, inheritance, natural resources and appropriate new technology.”²¹

CEDAW Committee’s Concluding Comments – para. 19.

- The Committee invites the Cook Islands to ensure that all national development plans, policies and programmes explicitly promote women’s equality and empowerment and the practical realization of the principle of equality of women and men, using the normative framework of the Convention. It encourages the Cook Islands to assess and monitor the impact of economic restructuring and privatization on the implementation of its obligations under the Convention, and to take corrective measures as necessary.
- It invites the Cook Islands to seek innovative sources of funding and assistance for the promotion of gender equality, including in partnerships with the private sector. [see International Aid]

12. TE KAVEINGA NUI

12.1 Te Kaveinga Nui: *Living the Cook Islands Vision – A 2020 Challenge*, sets out the national vision : “*To build a sustainable future that meets our economic and social needs without compromising prudent economic management, environmental integrity, social stability, and our Cook Islands Maori culture, and the needs of future generations*”. It includes the Cook Islands National Sustainable Development Plan (NSDP), national vision – “*to enjoy the highest quality of life consistent with the aspirations of our people and in harmony with our culture and environment*”.

12.2 The NSDP sets out the national development priorities and has a multi-sector focus. It emphasises the need to focus on providing equal opportunities for education, health and other social services (gender is included in social services); law and order and good governance at all levels; an innovative and well-managed private sector led economy; sustainable use and management of natural resources and the environment; strong basic infrastructure for national development; safe, secure and resilient communities; foreign affairs policy that meets the

²¹ By comparison, in the 2012 Gender Equality Declaration, Pacific Leaders agreed to “review legislation that limits women’s access to finance, assets, land and productive resources.”

needs of the Cook Islands people; and better coordination and institutional support systems for planning, monitoring and evaluation²².

12.3 The first NSDP1 (2007-2010) recognised that for the economy to grow, it is essential for private sector-led development to be strengthened, and for the Government to provide a favourable macroeconomic environment, critical physical and social infrastructure, institutional and political stability while maintaining law and order²³. The current document is the National Sustainable Development Plan 2011-2015 (NSDP2) and the final phase of the Te Kaveinga Nui will be the NSDP 2016-2020 (NSDP3). As a living document, the NSDP will undergo constant monitoring and alteration as deemed appropriate to reflect any changes to the implementation environment.²⁴

12.4 It may be an opportune time in the lead-up to the NSDP 2016-2010, to anchor both the Cook Islands National Strategy for the Development of Statistics (CINSDS) and the Gender Equality and Women's Empowerment (GEWE) Policy to mainstream gender into the National Sustainable Development Plan (NSDP), and implement international obligations into gender mainstreaming and where timely and quality statistics and indicators are indispensable for evidence-based policy-making, the setting of development priorities, and regular monitoring of and reporting on policy performance and development progress, national, regional and international (MDG, SDG+20, CEDAW, Beijing Platform, Busan, Pacific Plan).

12.5 The recent Fourth High-Level Forum on Aid Effectiveness 29 November to 1 December 2011 in Busan, Korea, which highlighted the importance the importance of gender equality and women's empowerment underpinning sound governance and informed decision making was again emphasised to:

- Accelerate efforts to achieve gender equality and the empowerment of women through development programmes grounded in country priorities, recognising that gender equality and women's empowerment are critical to achieving development results. Reducing gender inequality is both an end in its own right and a pre-requisite for sustainable and inclusive growth (para. 19). Commitment to redouble efforts to implement existing commitments to:

²² The Roadmap for Cook Islands National Strategy for the Development of Statistics (CINSDS), 2013, p.13

²³ The Roadmap for Cook Islands National Strategy for the Development of Statistics (CINSDS), 2013

²⁴ The NSDP 2011-2015.

- ❑ Accelerate and deepen efforts to collect, disseminate, harmonise and make full use of data disaggregated by sex to inform policy decisions and guide investments, ensuring in turn that public expenditures are targeted appropriately to benefit both women and men.
- ❑ Integrate targets for gender equality and women’s empowerment in accountability mechanisms, grounded in international and regional commitments.
- ❑ Address gender equality and women’s empowerment in all aspects of our development efforts, including peacebuilding and statebuilding.

12.6 As partners in development and recipients of aid, CSOs and NGOs National Action and Work plans are also expected to align with the NSDP, however there is a lack of recognition in how development goals and the MDGs links to human rights.

13. THE COLLECTION OF DATA AND MEASURABLE INDICATORS

13.1 The CEDAW Committee raised its concern at the lack or limited availability of data disaggregated by sex in a number of areas of the Convention, which are necessary for an accurate assessment of the situation of women and for informed, targeted policymaking and the systematic monitoring and evaluation of progress achieved, and trends over time, towards the realization of women’s de facto equality in regard to all areas covered by the Convention²⁵.

CEDAW Committee’s Concluding Comments: para.21

- The Committee calls upon the Cook Islands to enhance the collection of comprehensive data disaggregated by sex and of measurable indicators to assess trends in the situation of women and of progress towards the realization of women’s de facto equality, and calls its attention to general recommendation 9 in this regard.
- The Committee invites the Cook Islands, as necessary, to seek international assistance for the development of such data collection and analysis efforts, and to ensure that such efforts are based on the needs of users of data.

13.2 An area of need that has been identified across all sectors is the continued support for capacity building and strengthening in data collection (disaggregated by sex and age), gender analysis and utilisation of census and other survey data regarding specific issues, including monitoring and evaluation. Incorporating gender indicators will provide a measure of social

²⁵ CEDAW/C/COK/CO/1 Concluding Comments para 20

change and assess the performance and effectiveness of government policy, by measuring the changes in the status of women and men over a period of time.

13.3 The importance of statistics underpinning sound governance and informed decision making was again emphasised at the recent Fourth High-Level Forum on Aid Effectiveness²⁶ which highlighted the importance of:

- ❑ “partnerships to implement a global Action Plan for Statistics to enhance capacity for statistics to monitor progress, evaluate impact, ensure sound, results-focused public sector management, and highlight strategic issues for policy decisions.” (para. 18 c)

13.4 **The Cook Islands Gender Profile Report (2012)**, was written for policy makers and planners in the Cook Islands for policy review and development as well as future monitoring and evaluation. It presents and analyses statistics on the status of women and men, girls and boys and analyses these in terms of social and economic differences between women and men. It covers nine topics in keeping with the regional framework: Population, Households, families & housing, Education, Work & Employment, Public Life & decision-making, Legislation & governance, Environment, Poverty and Information & Communications. It provides the information required to develop and review policies that address the possible different impacts of policies or programs and laws on women and men.

13.5 **The Roadmap for Cook Islands National Strategy for the Development of Statistics (CINSDS)²⁷**

Extract from the Road map:

The preparation of a national strategic plan to (i) produce such statistics on an ongoing, sustainable manner and (ii) develop information management systems facilitating evidence based decision-making and regular monitoring of policy performance and development progress should be undertaken in recognition of the cross-cutting nature of official statistics and their relevance across government in: providing a quantitative basis for informed decision-making in socio-economic development planning and for monitoring development programmes and projects; and sufficiently evaluating the outcomes of development programmes and projects.

²⁶ Fourth High-Level Forum on Aid Effectiveness²⁶ 29 November to 1 December 2011 in Busan, Korea,

²⁷ **Roadmap for Cook Islands National Strategy for the Development of Statistics (CINSDS)** - Morgan Hanks, Cook Islands Statistics Officer, MFEM, Gay Tejada, PARIS21 consultant Gerald Haberkorn, Director Statistics for Development Division, SPC, 23 August 2011

- ❑ This is also consistent with the Second International Roundtable on Managing for Development Results, held in Marrakech, Morocco, in February 2004. The Marrakech Action Plan for Statistics (MAPS) set a target for all low-income countries to have designed a national strategy for the development of statistics (NSDS) with the objective to have high quality, locally produced statistical data to monitor progress towards the achievement of the Millennium Development Goals (MDGs) in 2015.
- ❑ The importance of statistics underpinning sound governance and informed decision making was again emphasised at the recent Fourth High-Level Forum on Aid Effectiveness 29 November to 1 December 2011 in Busan, Korea, which highlighted the importance of “partnerships to implement a global Action Plan for Statistics to enhance capacity for statistics to monitor progress, evaluate impact, ensure sound, results-focused public sector management, and highlight strategic issues for policy decisions.”
- ❑ In 2013, a UN High Level Panel on the Post 2015 Development Agenda offered Recommendations on the development agenda beyond 2015. Among these Recommendations, the Panel called for a ‘data revolution’ with the aim of improving the quality of statistics and information available to people and governments. The Panel recommended the establishment of “a Global Partnership on Development Data that brings together diverse but interested stakeholders – government statistical offices, international Organisations, CSOs, foundations and the private sector
The importance of gender equality and women’s empowerment underpinning sound governance and informed decision making was again emphasised.

14. CORE HUMAN RIGHTS INSTRUMENTS

14.1 The Cook Islands is a party to the following core international human rights instruments through New Zealand’s Accession to them namely:

- International Covenant on Civil and Political Rights (ICCPR) 1978
- International Covenant on Economic, Social, and Cultural rights (ICESCR)

- Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) 1985
- Convention on the Elimination of Racial Discrimination (CERD) 1966

14.2 Reporting to the Civil and Political Rights Committee

In March 1985, the Minister of Foreign Affairs presented the Cook Islands' initial report on the International Covenant on Civil and Political Rights to the United Nations (ICCPR). One of the concerns raised by the ICCPR Committee was the discriminatory provisions in the Cook Islands Religious Organisations Restrictions Act of 1975 which limits the introduction of new religions to the only four authorised by the Act. To date the Act has not been revoked or amended.

14.3 Human Rights Treaties Cook Islands Acceded to in its own right:

- The Convention on the Rights of the Child 6 June 1997
- The Convention on the rights of Persons with Disabilities and its optional protocol; 2009
- the Rome Statute of the International Criminal Court (ICC);
- the Geneva Conventions and its optional protocols
- the WHO Framework Convention on Tobacco Control (2003) and a range of other environmental conventions and declarations and a range of other Conventions and Declarations.

CEDAW Committee's Concluding Comments - Para. 45

The Committee notes that adherence to the seven major international human rights instruments²⁸ enhances the enjoyment by women of their human rights and fundamental freedoms in all aspects of life. Therefore, the Committee encourages the Cook Islands to consider ratifying the treaties to which it is not yet a party, namely²⁹, and to consider ratification in its own right of the International Covenant on Civil and Political Rights (ICCPR) and the International Covenant on Economic, Social and Cultural Rights (ICESCR), to which it is currently party through territorial application of New Zealand.

²⁸ The International Covenant on Economic, Social and Cultural Rights (ICESCR), the International Covenant on Civil and Political Rights (ICCPR), the International Convention on the Elimination of All Forms of Racial Discrimination (CERD), the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, The Convention on the Rights of the Child (CRC) and the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families.

²⁹ The Convention on the Elimination of All Forms of Racial Discrimination, the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families.

15. CONSTITUTIONAL SYSTEM

15.1 The Cook Islands since 1965 has been a self-governing country in free association with New Zealand. This special relationship was strengthened by the *2001 Joint Centenary Declaration of Principles of the Relationship between the Cook Islands and New Zealand* allowing the country to conduct its foreign affairs and interact with the international community as a sovereign and independent state. This agreement allows the Government of the Cook Islands capacity to enter into treaties and other international agreements in its own right with governments, regional and international organisations.

15.2 The 2001 Joint Centenary Declaration of the Principles of the Relationship between New Zealand and the Cook Islands provides in Clause 4, that:

Responsibility at international law rests with the Cook Islands in terms of its actions and the exercise of its international rights and fulfilment of its international obligations.

15.3 Cook Islands Law comes from a number of sources, the Constitution, Statutes, Common Law and Custom. Most of the Statutes are from the former administrations of New Zealand and Britain dating back to the early colonial administration period in the 1900s. A range of the laws have been repealed or replaced in New Zealand and Britain but remain in force in the Cook Islands.

16. THE COOK ISLANDS CONSTITUTION

16.1 Parts I to IV covers the establishment and roles of Parliament, the Judiciary, including the appointment of Judges and Justices of the Peace, the appointment and role of the Queen's Representative, electoral rights and provisions for protection from discrimination in civil and political rights and a constitutional guarantee of "*equality before the law and to protection of the law.*"

- The Head of State is Queen Elizabeth II, represented in the Cook Islands by an appointed Queens Representative and acts subject to the Constitution and on the advice of the Prime Minister and Cabinet.
- Parliament is the law making body. Executive Government lies with the Cabinet of ministers, all of who are elected members of Parliament. Cabinet signs accession to International Human Rights Instruments.

- The Judiciary comprises a Court of Appeal and a High Court, and lesser courts established by Acts of Parliament, responsible for civil, criminal and land title matters and the Children’s Court. The Judges of the High Court are appointed from New Zealand. The Justices of the Peace are locally appointed and do not have to have a legal background.

16.2 THE CONSTITUTION - HUMAN RIGHTS PROVISIONS

- 16.2.1 The Constitution pre-dates a range of international human rights standards, including the CERD and CEDAW, although some amendments were made in 1981 to reflect aspects of these standards, the constitution is outdated and needs review³⁰ to reflect societal change.
- 16.2.2 The Constitution Amendment Act 1980-1981; added human rights provisions to the Cook Islands Constitution. There are no provisions to incorporate international human rights law into domestic law.
- 16.2.3 Article 64 (1) prohibits discrimination by reason of *race, national origin, colour, religion, opinion, belief, or sex* (with respect to the exercise of) the following fundamental human rights and freedoms:
- a. The right to life, liberty, and security of person;
 - b. The right to equality before the law and the protection of the law
 - c. The right of the individual to own property and the right not to be deprived of it;
 - d. Freedom of thought, conscience, and religion;
 - e. Freedom of speech and expression; and
 - f. Freedom of peaceful assembly and association
- 16.2.4 Section 64 (2) places limitations on each of these rights by: any enactment or rule of law in force for protecting the rights and freedoms of others or in the interests of public safety, order, or morals, the general welfare; or the security of the Cook Islands. To this extent the statutory protections are not absolute until the limitations described are removed.
- 16.2.5 The *Race Relations Act 1972 s3* prohibit discrimination on the basis of colour, race, or ethnic or national origins of a person. It therefore affirms and promotes racial equality in the Cook Islands and is intended to support the implementation of the Convention on the Rights of Persons with Disabilities.

³⁰ Pathways to development

17. NO DEFINITION OF DISCRIMINATION

17.1 There is no definition of discrimination in the Constitution, nor does the Constitution recognise the multiple forms of discrimination that are now internationally recognised, such as age, sexual orientation, and others. Protection from discrimination in employment is not covered by the Constitution³¹. However the COTONOU Agreement of which the Cook Islands is a party, refers to trade and labour standards and article 50 provides for some incorporation of these standards:

The parties reaffirm their commitment to the internationally recognised core labour standards, as defined in relevant International Labour Organisation (ILO) Conventions, and in particular the freedom of association and the right to collective bargaining, the abolition of forced labour, the elimination of the worst forms of child labour, and non-discrimination in respect of employment.

17.2 Due process and a fair trial are covered in Section 65.

The Concluding Comments from the CEDAW Committee states³²:

While noting that article 64 (1) (b) of the Constitution of the Cook Islands guarantees equality before the law without discrimination on the grounds of sex, the Committee is concerned that neither the Constitution nor other appropriate legislation embody the principle of equality between women and men, nor contain a definition of discrimination against women, both direct and indirect and extending to acts of both public and private actors.

Para. 11 The Committee calls upon the Cook Islands to incorporate fully and without delay into the Constitution or other appropriate legislation, the principle of equality between women and men, and a definition of discrimination on the basis of sex in line with article 1 of the Convention, and extending to acts of discrimination by public and private actors, in accordance with article 2. The Committee further recommends that there be effective legislation to enforce the prohibition of discrimination.

18. THE STATUTES

³¹ Pathways to Development

³² CEDAW/C/COK/CO/1 , 10 August 2007, Concluding comments of the CEDAW Committee: Cook Islands

18.1 The Statutes are mostly from the former administrations of New Zealand and Britain dating back to the early colonial administration period in the 1900s. A range of the statutes have been repealed or replaced in New Zealand and Britain but many remain in force in the Cook Islands.

18.2 Many of the laws affecting women and children are found in the Cook Islands Act 1915. These laws are outdated and although there have been some amendments to the Act; there is a need for law reform to modernise and to develop new laws and harmonise conflicting laws.

19. COMMON LAW

19.1 The Cook Islands Act 1915; Section 616; requires the courts to apply the rules of common law and equity, but does not stipulate that the decisions of the English courts be followed exclusively. The Court of Appeal of the Cook Islands generally follows New Zealand and English authorities.

20. CUSTOM

20.1 Custom is narrowly defined. The Cook Islands Act 1915 defines custom as “*the ancient custom and usages of the Natives of the Cook Islands,*” thus precluding the courts from recognising new or changed custom. Its legal significance is limited to interests in customary titles and land.

21. OMBUDSMAN’S OFFICE

21.1 Under the Cook Islands Disability Act 2008, the Ombudsman’s jurisdiction was further extended to investigate complaints of the discrimination against people with disabilities. The Cook Islands is the first Pacific Island Country to develop a rights-based disability policy and Action Plan.

22. COOK ISLANDS HUMAN RIGHTS OFFICE

22.1 In November 2007 by way of CM (07) 694, Cabinet approved “the appointment of the [Ombudsman] to be in charge of the Cook Islands Human Rights Office” as a result of a recommendation made by a former Minister of Justice who attended the 2007 Pacific Regional

Consultations for Members of Parliament on the Pacific Plan and Human Rights Conventions & Standards and their application to Domestic Law, Policy & Practice that was held in Auckland.

22.2 One of the findings of the regional meeting was that there was a lack of knowledge and understanding on human rights standards and compliance among Members of Parliament and government agencies. It was important for legislators to have some knowledge of human rights issues when discharging their functions in lawmaking, oversight; and representation.

22.3 The state has an obligation to respect, protect, promote and fulfill the human rights of the people. Furthermore, Government was mindful of the obligation of Forum countries under the Pacific Plan to “establish human rights mechanisms to support the implementation of Forum Principles of Good Leadership and Accountability”, as well as “support for reporting and other requirements” under human rights conventions, covenants and agreements.

22.4 There was consideration by Government on whether to establish a “stand alone” Human Rights Office however decided that it would be more cost effective to “house” such an office within an existing one and decided that the Ombudsman Office would be the most suitable to incorporate this function given the Ombudsman’s independence as an officer of Parliament. However, the Ombudsman was not provided with any terms of reference indicating how this would be done or allocated any extra resources to meet this obligation despite subsequent requests each year for modest resources. As a result, the Ombudsman deferred this responsibility until FY 2011-12 following her discussion with the Budget Support Group.

- The Ombudsman agreed to initiate the establishment of a Human Rights Office within the confines of its existing resources by firstly developing a 3-year strategic plan which will identify the role of such an Office and how it will fit into the existing Cook Islands Human Rights framework.
- An immediate task is to ensure that Human Rights are recognized within the National Sustainable Development Plan 2011-2015 which is currently being reviewed.