

Legal Gap Analysis of Gender Equality in the Republic of Palau

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Executive Summary

This Report was prepared for the International Organization for Migration (IOM) as part of the Inspiring Women’s Advancement through Collective Action (IWA) Project, implemented by the IOM and funded by the US Department of State. The project aims to contribute towards increased local understanding of, and demand for, removing barriers to gender equality and galvanizing coordinated actions.

The Report presents a broad analysis of the law and policies of the Republic of Palau that have bearing on issues of gender equality. This is primarily a desk-based review of Palau’s Constitution, legislation and case law, including case law which formalizes custom as customary law. The Report also includes references to additional secondary written studies and other sources as well as some limited consultations with selected members of the Government and non-governmental organizations.

The Report is arranged as follows: Firstly, it provides a listing of existing sources of law with broad analysis of their associated gender implications. Secondly, it sets out a brief survey of some key laws that are in preparation or have been attempted in the past. The bulk of the Report presents a gender gap analysis arranged across a broad range of issues, as follows: citizenship, political rights and leadership; education; employment; employees’ social security; healthcare; taxation; social subsidies; family relations; marriage and divorce; property and inheritance; LGBTQI+ rights; children’s rights; prisoners’ rights; and the rights of persons with disabilities. The law in Palau for each of these areas is analyzed in relation to internationally agreed principles of gender equality, and summaries of these comparisons are provided for each section.

The Report concludes with a list of recommendations for amending specific features of Palau’s law which do not conform with those internationally agreed principles.

Introduction

The Republic of Palau is a small island nation-state located in the northwest Pacific with a population of about 18,200 people (as of 2022). Palau consists of around 340 islands, with about 10 that are inhabited, and has a total land area of 458 square kilometers and an Exclusive Economic Zone (EEZ) of approximately 600,000 square kilometers. Palau is a democratic republic with a directly elected President and Vice President and a bicameral legislature (Olbiil Era Kelulau, OEK) consisting of the House of Delegates and the Senate. It is also a federation of 16 States. While an independent nation since 1994, Palau remains affiliated with the United States through the terms of its ‘Compact of Free Association’.

Palau’s current legal system is a product of its colonial and postcolonial history. Palau came under German, Japanese and then finally United States control up until its independence in 1994. While Palau was part of the Trust Territory of the Pacific Islands administered by the United States (1947–1994), US-based legal principles and substantive laws were adopted as the main basis for the legal system. This system was then retained following independence. However, customary law still has an important place within the legal system. Custom has been standardized and transformed by the courts in particular areas of social life and this blend of US-based and customary law has important implications for principles of gender equality in Palau.

It is often casually observed that Palau has both a matrilineal and matriarchal indigenous culture. This is based on the primary inheritance and status rights afforded to clan members who are ‘children of the women’ (*ochell*) compared to the secondary rights of ‘children of the men’ (*ulechell*), and the role of female clan titleholders in selecting male clan chiefs. However, the relative position of men and women in Palauan society has been the subject of much debate among both foreign scholars and local observers across time. While some thought that Palauan women traditionally occupied subordinate positions,¹ others have emphasized women’s roles in selecting chiefly title holders, in providing and controlling money, their involvement in political campaigns such as that against US influence during the early 1990s or in contemporary electoral campaigns, and generally wielding strength behind the scenes.² Women’s traditional role as peacemakers has also been highlighted, along with the influences of women’s clubs and non-governmental organizations.³ Women are also traditionally the primary growers and sellers of agricultural produce, especially taro. Women are also collectors of invertebrates from nearshore areas and sometimes use small motorboats for fishing, but spear and net fishing is usually the province of men.⁴

¹ Homer G. Barnett, *Palauan Society: A Study of Contemporary Native Life in the Palau Islands* (University of Oregon, 1949), pp. 106, 179.

² Lynn B. Wilson, *Speaking to Power: Gender and Politics in the Western Pacific* (Routledge, 1995), pp. 99–100, 162, 189; James E. Davis and Diane Hart, *Government of Palau: A Nation that Honors its Traditions* (Ministry of Education, Republic of Palau, 2002), p. 124.

³ Ministry of Community and Cultural Affairs Republic of Palau and Ann Hillmann Kitalong, ‘Stocktake of the Gender Mainstreaming Capacity of Pacific Island Governments: Republic of Palau’ (2016), p. 2.

⁴ Faustina K. Rehuher-Marugg and Julita Tellei, ‘Mesei: Taro Field Landscapes in Palau,’ in *Traditional Knowledge and Wisdom: Themes from the Pacific Islands*, edited by Samuel Lee et al. (ICHCAP 2014); Pacific Community, ‘Palauan Women Cultivate Success from the Taro Patch to the Policy Table’ (8 December 2022), available at: <https://www.spc.int/updates/blog/2022/12/palau-women-cultivate-success-from-the-taro-patch-to-the-policy-table>; Elizabeth Matthews, ‘The Role of Women in the Fisheries of Palau’ (Internship Report, submitted to Marine

In present-day Palau, there is no denying that it is mostly only male traditional chiefs who are directly incorporated into National and State government structures and that there have been relatively few women in openly elected leadership positions. This leads to the argument that women’s traditional social status and leadership roles have been eroded over time in interaction with the colonial and postcolonial political and legal regimes. Women who are traditional clan title holders are also not necessarily progressive supporters of women’s participation in elected leadership roles in Palau or in promoting international principles of gender equality.⁵ On the other hand, women currently dominate middle-level positions in government employment, resulting in there being a small overall average gender wage gap in favor of women in Palau.⁶

Legal history and the influence of US legal principles has had mixed outcomes in Palau. In the statutes inherited from the United States Trust Territory era, there are some remaining key instances of assumptions about traditional roles of men and women that arguably amount to gender discrimination. Meanwhile, some case law principles adopted from US precedent such as those relating to determining child custody and division of property upon divorce are clearly based on principles of gender equality.

The direct influence of international human rights law in Palau has been relatively weak – perhaps following the lead of the United States which has generally been hesitant to sign up to human rights treaties. The influence of international human rights law in Palau is seen most clearly on some specific issues, such as in relation to the rights of the child, and the ratification of the Convention on the Rights of the Child in 1995 and its subsequent adoption into Palauan domestic law. While Palau signed the other major international human rights instruments in 2011, these have not been fully ratified and nor have they been directly incorporated into the legal system. For example, many of the Convention on the Elimination of Discrimination Against Women (CEDAW) principles have not been adopted through legislation despite the signing of CEDAW in 2011.

While there are some existing reports on aspects of gender and human rights in Palau,⁷ to our knowledge, there is no complete gender analysis of Palauan law. This Report aims to provide thorough coverage of the main aspects of gender difference across different legal issues.

This Report consists of five main Parts. Part 1 lists and describes the sources of law in Palau and their general gender implications. In Part 2, we briefly mention some proposed laws that have been attempted and not yet adopted or are in the planning stages. In Part 3, we move beyond formal law

Resource Management Program, Oregon State University 1992); Lyn Lambeth, *An Assessment of the Role of Women within Fishing Communities in the Republic of Palau* (Secretariat of the Pacific Community, 1999); UNDP et al, ‘Palau Gender and Natural Resources 2020 National Report’ (UNDP 2021).

⁵ Diane Zetlin, ‘Women in Parliaments in the Pacific Region,’ *Australian Journal of Political Science* 49(2)(2014): 252–266, at p. 257 (citing a speech given by J. Uduch Sengebau-Senior to the Pacific Parliamentary and Political Leaders Forum, New Zealand, 18–22 April 2013).

⁶ Data from the Social Security Administration for the years 2019–2022, show that females on average earned more than males on average (around 8% less than females), although there are more males employed in general.

⁷ See, e.g., Ministry of Community and Cultural Affairs Republic of Palau and Ann Hillmann Kitalong, ‘Stocktake of the Gender Mainstreaming Capacity of Pacific Island Governments: Republic of Palau’ (2016); UNWomen, *Gender Equality Brief for Palau* (March 2022); US Department of State, *Palau 2022 Human Rights Report*.

to also describe existing policies and processes which have some bearing on gender issues. Part 4 represents the bulk of the Report, and contains the legal gap analysis of various issues that have relevance or implications for gender equality in Palau. Finally, in Part 5, we set out our recommendations.

While this Report is mostly based on a desk review of Palauan law, we also consulted with and thank the following people: Hon. J. Uduch Sengebau Senior (Vice President and Minister of Justice); Roxanne Sial Blesam (Chief of Staff, Office of the Vice President); Asterio Takashi (Special Advisor, Office of the Vice President); Director Eunice Akiwo (Ministry of State); Director Raymond August (Ministry of Human Resources, Culture, Tourism and Development); Baklai Temengil (Former Minister of Community and Cultural Affairs, and current Secretary General of the Palau National Olympic Committee (PNOC)); Rondy Ronny (LAIIB); Yaya Matul (LAIIB); Sifumi Midar (LAIIB); Roberta Louch (Risel Belau); Maria Otto (Risel Belau); Sadaria Fritz (Risel Belau); Sylvia Kloulubak (BANGO); Leonard Basilius (BANGO); Jefferson Thomas (BANGO); Philom Temengil (BANGO); Sally Techitong-Soalablai (BANGO); Steph Ngirchoimei (BANGO) and Elsie A. Ikeya (Social Security Administration).

Any errors in the Report are the responsibility of the authors.

1. Existing Laws

This first Part of the Report lists the existing sources of law in the Republic of Palau that have influence on issues of gender equality.

1.1. The Constitution of the Republic of Palau

The Constitution is the highest legal authority in the Republic of Palau. It sets out the basic structures of government, citizenship rules and also various fundamental rights.

It is also important to note that, under the Constitution, Palau has a Federal system of government with 16 States, and each State has a Constitution of its own and local law-making powers.

The sections on fundamental rights most relevant to considerations of gender equality are:

- Art. IV § 5: ‘Every person shall be equal under the law and shall be entitled to equal protection. The government shall take no action to discriminate against any person on the basis of sex ... except for the preferential treatment of minors, elderly, indigent, physically or mentally handicapped, and other similar groups, and in matters concerning intestate succession and domestic relations.’⁸

Due to these listed exceptions in relation to intestate succession and domestic relations, the Constitution permits both legislation and customary law to recognize gender differences on these issues (see further discussion below in Parts 4.8 and 4.9).

- Art. IV § 7: ‘...Accused persons lawfully detained shall be separated from convicted criminals and on the basis of sex and age’.

See further discussion on prisoners’ rights in Part 4.13 below.

- Art. IV § 13: ‘The government shall provide for marital and related parental rights, privileges and responsibilities on the basis of equality between men and women, mutual consent and cooperation. All marriages contracted within the Republic of Palau shall be between a man and a woman.’⁹

Note that art. IV, § 13 was amended by the Twenty-Second Amendment in November 2008 when the provision on marriage needing to be between a man and a woman was added thereby precluding same-sex marriage in Palau (see further discussion in Part 4.10 below).

⁸ There is no case law providing further interpretation of the Constitutional provision on equal protection based on sex (art. IV § 5), that is, it does not appear that anyone has ever brought a lawsuit against the government claiming discrimination on the basis of sex.

⁹ There are also no cases that directly interpret this Constitutional provision on marital and parental rights (art. IV § 13).

1.2. The Palau National Code (PNC)

The Palau National Code contains the codified versions of all national legislation enacted by the Palau Congress (Olbiil Era Kelulau, OEK). The key titles in the Code with particular relevance to gender rights include:

- Title 13 on Citizenship, Immigration and Labor
- Title 17 on the Penal Code (including the *Anti-Human Trafficking Act 2022*)
- Title 21 on Domestic Relations (including the *Family Protection Act 2012*)
- Title 25 on Estates and Trusts
- Title 33 on Public Employment
- Title 34 on Public Health, Safety and Welfare
- Title 40 on Revenue and Taxation
- Title 41 on Social Security

1.3. International Law

Palau has only fully ratified¹⁰ a small number of international human rights instruments, as follows:

- UN Convention on the Rights of the Child (CRC) (ratified in 1995);¹¹
- UN Convention on the Rights of Persons with Disabilities (CRPD) and the Optional Protocol to the Convention and acceptance of the Inquiry Procedure (ratified in 2013);
- UN Convention against Transnational Organized Crime (UNTOC) and its associated Protocol to Prevent, Suppress, and Punish Trafficking in Persons, Especially Women and Children (the TIP Protocol) (ratified in 2019).

Palau has signed, but not ratified, the following international human rights treaties¹² (all signed in September 2011 by then President Johnson Toribiong), as follows:

- Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (CAT);
- International Covenant on Civil and Political Rights (ICCPR);
- Convention for the Protection of All Persons from Enforced Disappearance (CED);
- Convention on the Elimination of All Forms of Discrimination against Women (CEDAW);
- International Convention on the Elimination of All Forms of Racial Discrimination (CERD);
- International Covenant on Economic, Social and Cultural Rights (CESCR);
- International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families (CMW).

¹⁰ Ratification of treaties requires a vote of the majority of the members of each house of the OEK: Constitution, art. IX § 5(7).

¹¹ Note, however, that Palau has not signed or ratified the three optional protocols to the Convention on the Rights of the Child.

¹² See UN Treaty Body Database, available at: https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Treaty.aspx?CountryID=132&Lang=en.

Palau endorsed the *Beijing Declaration and Platform for Action*,¹³ and also signed the *UN Joint Statement on Ending Acts of Violence and Related Human Rights Violations Based on Sexual Orientation and Gender Identity* in 2011.

Palau joined the International Labor Organization (ILO) in 2012, and has ratified two international labor conventions (one fundamental and one technical),¹⁴ as follows:

- ILO Convention on Worst Forms of Child Labor (C182) (ratified in 2019);
- ILO Maritime Labor Convention (MLC, 2006, and its 2014, 2016 & 2018 amendments) (ratified in 2012).

The low number of ILO Conventions ratified corresponds with Palau's general lack of labor protections especially for private sector workers (discussed further at Part 4.3 below).

These signed and ratified conventions have little direct, legally enforceable effect under Palauan law. Palau's Constitution provides procedures for ratification of international treaties,¹⁵ but is silent as to their domestic effect, and it must therefore be assumed that it has a 'dualist' system in relation to its adoption of international law into the domestic legal system. That is, international law instruments do not become legally binding until national legislation has been passed by the Palau Congress (OEK) to adopt a Convention's particular principles into local law.¹⁶ Palau's courts do not appear to have yet tested the application of signed or ratified human rights treaties where their principles have not yet been incorporated into domestic law; however, following the lead of the United States, such treaty principles are likely to only provide interpretative guidance and will not be considered binding. There is, therefore, no explicitly stated difference in legal effect between signed and ratified conventions in Palau.

Pacific Instruments

We should note here that Palau is also committed to the *2012 Pacific Leaders Gender Equality Declaration* via the Pacific Islands Forum. This Declaration is intended to be a tool for advocacy, government policy development and data collection. It can also be potentially used to hold decision-makers to account at the highest level, although its accountability framework is underdeveloped.¹⁷ In 2023, this Declaration is being reviewed for intended revitalization. Earlier in time, Palau also committed to the Pacific Community's *Revised Pacific Platform for Action on Advancement of Women and Gender Equality (RPPA) (2005–2015)*. With respect to disability, in

¹³ Palau reported against the Beijing Declaration in 2019: Republic of Palau, Ministry of Community and Cultural Affairs, 'National Review for the Implementation of the Beijing Declaration and Platform for Action (1995)' (submitted in April 2019).

¹⁴ 'Ratifications of ILO Conventions for Palau', available at:

https://www.ilo.org/dyn/normlex/en/f?p=1000:11200:0::NO:11200:P11200_COUNTRY_ID:2466492.

¹⁵ 'Major governmental powers including but not limited to defense, security or foreign affairs' may be delegated by treaty providing that it gains the support of 2/3 of the members of each house of the OEK and by a majority of votes in a national referendum (Constitution, art. II § 3). The OEK otherwise has the power to ratify treaties by a majority vote of each house (Constitution, art. IX § 5(7)).

¹⁶ See: Committee on the Rights of the Child, 'Consideration of Reports Submitted by States Parties under Article 44 of the Convention, Second Periodic Reports of States Parties due in 2002 – Palau', p. 16. (noting the Attorney General's view that the principles of the Convention on the Rights of the Child are not binding until enacted into domestic law).

¹⁷ Pacific Islands Forum, 'Pacific Leaders Gender Equality Declaration Independent Review: Final Report' (31 October 2021).

2016, the Pacific Islands Forum endorsed the 2016–2025 *Pacific Framework for the Rights of Persons with Disabilities* (PFRPD).

1.4. Compact of Free Association with the United States

Palau’s ‘Compact of Free Association’ (COFA) with the United States came into effect in 1994. This treaty provides, among other issues, for US defense of Palau and significant financial support, and in May 2023 the US agreed to extend financial support for an additional 20 years (although the US Congress still needs to approve the funds). Some components of this financial support flows through US Federal funding schemes, which requires adherence to US regulations, for example, in relation to health funding for communicable diseases and family planning, and for special needs education.

The COFA also means that Palauans can serve in the US armed forces, and may also otherwise travel to, study and work in the United States without a need for a visa. Approximately 500 Palauans serve in the US armed forces,¹⁸ and it is likely that this includes more Palauan men than women, although there does not appear to be publicly available data on this. This also has some gendered impacts in relation to veterans’ health needs once former serving officers return to Palau. There are also unfortunately no reliable statistics on the numbers of Palauans who move to the United States for study or employment, or their length of stay, or if there are any gender differences in these migration movements.¹⁹ Our consultations indicated that it is thought that women are more likely to make the decision to move themselves and their families overseas in search of better opportunities.

The out-migration of Palauans to the United States is one significant factor in the gaps in the local labor force, which have then been filled by migrant (non-resident) workers (see discussion below in Parts 3.3 and 4.3).

1.5. Case Law

Palau’s legal system follows the US common law system meaning that the case interpretations of Palau’s Supreme Court are binding on future decisions (i.e. the principle of *stare decisis*).

US case law itself, as expressed in the Restatements of the Law approved by the American Law Institute, forms a source of law in Palau where there is an absence of local law or customary law on a particular issue. This principle excludes criminal offenses.²⁰ Palauan constitutional provisions or other statutes which copy or are derived from US statutory provisions may be interpreted based on US case law.²¹ Otherwise US case law may be persuasive on Palauan courts until adopted by

¹⁸ US Department of State, ‘US Relations with Palau’ (24 August 2022), available at: <https://www.state.gov/u-s-relations-with-palau/>.

¹⁹ Overall estimates of emigration data for Palauans in 2020 provided by the United Nations Department of Economic and Social Affairs (<https://www.un.org/development/desa/pd/content/international-migrant-stock>) (Total: 2656, Male: 1386, Female: 1270) show a slightly higher number of male emigrants than female.

²⁰ 1 PNC § 303.

²¹ *Republic of Palau v. Carreon*, 19 ROP 66 (2012); *Silmai v. ROP*, 10 ROP 139 (2003).

the Palau Supreme Court when it becomes binding, but Palauan courts are not ‘bound to mechanically embrace United States case law’.²²

As will be discussed in this Report below (Part 4.8), case law drawing on US principles has been an important source of law affecting gender equality in certain areas, such as in child custody arrangements and the distribution of marital property following divorce.

1.6. Regulations

In addition to legislation, delegated rule-making in the form of regulations may be enabled by particular legislative provisions and have the force of law providing that they do not contradict higher level legislation. Regulation-making powers are usually delegated to particular Ministers. Other types of lower-level rules and standard operating procedures (SOPs) also guide government processes.

Key sets of existing regulations and rules relevant to issues gender in Palau include:

- Public Service Regulations (1997) which regulate the employment of national government employees (see further Part 4.3 below);
- Division of Labor Rules and Regulations (2019) which mostly apply to non-resident workers in the private sector (see further Part 4.3 below);
- Ministry of Education School Handbook (2010 and revised in 2019) (see further Part 4.2 below);
- Ministry of Justice Regulations and Standard Operating Procedures (SOPs) for the various Divisions of the Bureau of Public Safety;
- Republic of Palau, ‘Standard Operating Procedures for the Identification and Referral of Victims of Trafficking and Potential Victims of Trafficking; and Investigations of Trafficking Cases’ (2023) (see further Part 4.11 below);
- Ministry of Health, Womens’ Health Clinical Protocol (2018) (see further Part 4.5 below);
- Ministry of Health, Healthcare Providers’ Family Violence Policies, Procedures and Protocols (2016) (see further Part 4.5 below);
- Palau Supreme Court, Rules of Evidence of the Republic of Palau (2022).

1.7. Customary Law

Traditional law is expressly recognized in Palau’s Constitution and also in various sections of the Palau National Code. In general, the Constitution provides that ‘statutes and traditional law shall be equally authoritative. In case of conflict between a statute and traditional law, the statute shall prevail only to the extent that it is not in conflict with the underlying principles of traditional law.’²³ Further (and somewhat contradictorily), the Palau National Code provides that ‘recognized

²² *Republic of Palau v. Carreon*, 19 ROP 66 (2012).

²³ Constitution, art. V § 2.

customary law shall have the full force and effect of law so far as it is not in conflict with legal authority'.²⁴ In general, it is left to the courts to further interpret where customary law applies.

Custom is also given a legal basis via legislation in specific areas of law in Palau, such as through recognition of customary marriage, divorce and child adoption.²⁵ Custom also governs some areas of inheritance of land and personal property that fall outside the statutory law. In relation to criminal law, a court may dismiss a prosecution if the defendant's conduct was within customary license or tolerance and if it was not inconsistent with the intent of the law,²⁶ and courts will consider Palauan customs as one aspect of criminal sentencing and setting probation terms.²⁷

State powers over natural resources within their territories (see Part 1.8 below), and the integration of traditional leaders in State power structures, in some circumstances enables the use and influence of custom in the management of marine and other local resources.²⁸

Disputes with a sole basis in customary law, such as disputed chiefly titles or disputes over clan lands, may be brought to the formal courts for determination. Indeed, Palauans have not been reluctant to take such disputes to the courts, and the courts have determined that they do have the power to adjudicate matters purely concerned with custom. In resolving such disputes, Palau's courts have effectively standardized and transformed many originally oral-based customs into written customary law.²⁹ One of the basic and fundamental principles of customary law is that decision-making should be achieved through consensus, and sometimes the court has directed parties to discuss a matter until they come to a collective agreement. For example, in the case of *Terekieu Clan v. Ngirmeriil*,³⁰ the Court held that the female titleholder of a clan was not able to distribute clan funds alone but needed to consult with other senior strong members and reach a consensus.

Custom becomes customary law when a Palauan court, in its written opinion, holds that such rules control an issue's resolution. Appellate division case law then becomes binding precedent, absent evidence that the custom has changed. In the landmark case of *Beouch v. Sasao*,³¹ the Court determined that if there is no controlling case law on a particular matter, then a four-element test will be used for determining whether a given custom can be considered traditional law: (1) the custom is engaged voluntarily; (2) the custom is practiced uniformly; (3) the custom is followed as law; and (4) the custom has been practiced for a sufficient period of time to be deemed binding. There must be clear and convincing evidence to support a finding that a custom exists, and

²⁴ 1 PNC § 302; 1 PNC § 414.

²⁵ 21 PNC §§ 103, 104.

²⁶ 17 PNC § 236.

²⁷ 17 PNC §§ 618; 632.

²⁸ Tom Graham and Noah Idechong, 'Reconciling Customary and Constitutional Law: Managing Marine Resources in Palau, Micronesia,' *Ocean & Coastal Management* 40(2-3)(1998): 143-164; Rebecca L. Gruby and Xavier Basurto, 'Multi-level Governance for Large Marine Commons: Politics and Polycentricity in Palau's Protected Area Network,' *Environmental Science & Policy* 36 (2014):48-60.

²⁹ Tom Graham and Noah Idechong, 'Reconciling Customary and Constitutional Law: Managing Marine Resources in Palau, Micronesia,' *Ocean & Coastal Management* 40(2-3)(1998):143-164, p. 150.

³⁰ *Terekieu Clan v. Ngirmeriil*, 2019 Palau 37.

³¹ *Beouch v. Sasao*, 20 ROP 41 (2013).

customary expert witnesses will be called to testify at trial as to these matters of custom,³² and in practice such experts are usually older men.

Customary law does have gender unequal implications particularly in relation to allocation of chiefly titles, family matters of marriage and divorce, and in matters of property control and inheritance (discussed further below).

1.8. State Constitutions and Laws

Palau has a Federal System with 16 States, and each State has its own Constitution and law-making powers. States may legislate on matters expressly allocated as State powers in the Constitution or by national legislation.³³ They have express powers over the natural resources in their territories, may impose taxes, borrow money for public programs, make investments, appropriate land with just payment as a final resort, prosecute their own criminal laws and enact and enforce local zoning laws.³⁴

The State Constitutions have important implications for access of men and women to State policy and law-making processes due to the direct appointment of male traditional chiefs (see further discussion at Part 4.1(ii) below).

Some State laws may also have gender impacts, such as the employment protections rights (including maternity leave) for permanent State government employees (see further discussion at Part 4.3(ii) below), and potentially in relation to local natural resource access and management given the traditional gender divisions of labor involved in fishing and farming.³⁵

2. Proposed Laws

This second part of the Report outlines proposed laws that have been or are under consideration by Palau's Congress (OEK) that are relevant to issues of gender equality. These are proposals which have not yet made it through the full legislative process and therefore there is no guarantee that they will do so.

The leading area where there have been several, but so far unsuccessful attempts, to introduce new laws promoting gender equality relate to the right to maternity leave for all workers. Only permanent government employees currently enjoy maternity leave rights (see further Part 4.3 below). Various bills have been introduced to extend maternity leave rights to the private sector

³² See, e.g. *Imetuker, Kumangai and Remeliik v. Ked Clan Lineage*, 2019 Palau 30; *Ngerungor Clan v. Renguul*, 2019 Palau 4; *Yangilmau v. Carlos*, 7 ROP Intrm. 169 (1999).

³³ Constitution, art. XI § 2.

³⁴ Kevin Bennardo, 'The Rights and Liberties of the Palau Constitution,' *Asian-Pacific Law and Policy Journal* 12(2)(2011): 1–122, p. 111.

³⁵ See references at fn. 4 above.

since as early as 2013,³⁶ with the most recent attempts in 2019³⁷ and in 2022.³⁸ These bills have tended to gain the approval of the Senate but have failed to pass the House of Delegates, with particular concern revolving around the extension of maternity leave benefits to non-resident (foreign) contract workers and associated costs to employers.³⁹

Other work is continuing on a legal review of Palau's labor law in general, with recent support from the International Labor Organization (ILO) to benchmark Palauan law against the ILO fundamental Conventions.⁴⁰ A draft set of new labor regulations (2023) has been prepared and is under consideration by the OEK (due to the need for the regulations to match national legislation), and includes a proposed removal of the ban on transferring a migrant worker's contract to a new employer. A Bill introduced in 2022 proposed to incrementally raise the minimum wage from the current \$3.50 per hour until it reaches \$6.50 per hour.⁴¹

Several bills were introduced in the 10th OEK (2017–2020) including a Child Online Protection Policy, Cyber-Security Bill, Pornography Bill, and a Bill to expand penalties for violation of rights to privacy.⁴²

A Bill to criminalize the distribution of pornographic and sensitive material, which would include revenge pornography, passed the Senate in September 2023.⁴³ This Bill still needs to pass the House of Delegates to be enacted.

A Hate Crimes Bill, which proposed to punish hate crimes including those on the basis of sexual orientation and gender identity, was passed by the Senate in January 2015 but was not fully adopted.

The goal of enacting a comprehensive 'Child Welfare Act' has been identified by the Palau Ministry of Health and Human Services and UNICEF, but has not yet progressed beyond the planning stage.⁴⁴

³⁶ Senate Bill no. 9-20-SD2.

³⁷ Senate Bill SB 10-52; Island Times, 'OEK Introduces Bill on Maternity Leave' (8 October 2019), available at: <https://islandtimes.org/oek-introduces-bill-on-maternity-leave/>.

³⁸ Island Times, 'Bill Calls for Paid Maternity Leave Again' (4 November 2022), available at: <https://islandtimes.org/bill-calls-for-paid-maternity-leave-again-mandate-paid-annual-and-sick-leave-for-all-employees/>.

³⁹ Palau Ministry of Health and Human Services with UNICEF Pacific, 'Palau Child Protection Systems Assessment and Mapping Project: Findings and Recommendations' (2022), p. 15.

⁴⁰ For details see: <https://www.ilo.org/suva/countries-covered/palau/lang--en/index.htm>.

⁴¹ Senate Bill SB no. 11-9; Island Times, 'Raising Minimum Wages Tops the Priority List for 2023 - Whipps' (30 December 2022), available at: <https://islandtimes.org/60721-2/>.

⁴² Palau Ministry of Health and Human Services with UNICEF Pacific, 'Palau Child Protection Systems Assessment and Mapping Project: Findings and Recommendations' (2022), p. 46.

⁴³ Island Times, 'Bill to Criminalize Distribution of Sensitive and Intimate Images Passes Senate' (22 September 2023), available at: <https://islandtimes.org/bill-to-criminalize-distribution-of-sensitive-and-intimate-images-passes-senate/>.

⁴⁴ Ibid, p. 5.

A Bill introduced in 2023 sought an evaluation of Palau’s juvenile justice system and the provision of a separate facility for juvenile detention⁴⁵ (see further discussion below at Part 4.13).

3. Gender-Related Policies and Procedures

In this third part of the Report, we move beyond formal laws and regulations and outline other relevant government policies and procedures in Palau which have influence on issues of gender equality.

3.1. Sustainable Development Goals (SDGs)

Palau has committed to achieving the Sustainable Development Goals (SDGs),⁴⁶ and undertook its first Voluntary National Review (VNR) reporting in June 2019.⁴⁷ In relation to SDG #5 on gender equality, Palau reported that it has integrated six of the nine SDG 5 indicators into its National SDG Framework.

The data collection processes for the second VNR are currently underway in the second half of 2023.⁴⁸

3.2. Gender Mainstreaming Policy

Palau’s *Gender Mainstreaming Policy* adopted in 2018⁴⁹, accompanied by a *Strategic Plan of Action* (2018–2023), is a general level, national, policy statement on achieving equality between men and women. It requires issues of gender, and the needs of different genders, to be taken into account in all levels of policy-making and governance. All new policies should have gender aspects considered and sex disaggregated data should be collected on all relevant issues. In the view of former Minister Baklai Temengil who oversaw the development of this Policy, it raised the visibility and profile of gender as a concern among Palauan leaders, helped to dispel misconceptions and activated particular responsibilities.

Under this Policy, each national Ministry is required to formulate a gender plan that sets targets and actions in accordance with the Sustainable Development Goals (SDGs) and the ‘Pacific Leaders Gender Equality Declaration’ of 2012 (see also Part 1.3 above). The Policy calls for the fostering of organizational culture that is responsive to gender mainstreaming and the institution

⁴⁵ Island Times, ‘Bill Calls for Reexamination of the Juvenile Justice System’ (11 April 2023), available at: <https://islandtimes.org/bill-calls-for-a-reexamination-of-the-juvenile-justice-system/>.

⁴⁶ See: Executive Order no. 419 on Establishing a Monitoring and Evaluation Framework for the Implementation of the 2030 Sustainable Development Agenda (28 December 2018).

⁴⁷ Republic of Palau, *Pathways to 2030: Progressing with our Past Toward a Resilient, Sustainable and Equitable Future* (Palau Voluntary National Review, 2019).

⁴⁸ Executive Order no. 483 on Establishing a Monitoring and Evaluation Framework for the Implementation of the 2030 Sustainable Development Agenda (3 May 2023).

⁴⁹ See also: Ministry of Community and Cultural Affairs Republic of Palau and Ann Hillmann Kitalong, ‘Stocktake of the Gender Mainstreaming Capacity of Pacific Island Governments: Republic of Palau’ (2016), for a description of the gender governance landscape in Palau in the early 2010s.

of accountability measures for monitoring and evaluation. Under the policy, a Gender Mainstreaming Committee is to be convened on a quarterly basis and include representatives from each Ministry.

However, it appears that many of the key actions in the Gender Mainstreaming Policy and Strategic Plan have not yet filtered down evenly for adoption by the national Ministries and other bodies. The State governments have also not yet adopted gender mainstreaming policies.

The Gender Division is currently located in the Ministry of State after having previously been located in the Ministry of Culture and Community Affairs in the previous administration. As of the time of writing in 2023, the current Gender Division only has a Director with no staff, although efforts are underway to recruit new officers.

Note that the *Gender Mainstreaming Policy* does not include direct consideration of LGBTQI+ issues.

3.3. Migrant Labor Policies and Processes

Palau has a significant migrant worker population, with Bangladesh, Filipino and Chinese workers making up the majority.⁵⁰ In the 2020 census data, there were 649 Bangladesh male citizens in Palau, but only 3 Bangladesh females. Among the population of citizens of the Philippines in Palau, there were 1795 males and 1416 females showing a more even spread but still more males than females.

The vast majority of Bangladesh migrant workers are male and tend to work in areas requiring physical labor such as construction and agriculture. It seems that cultural preferences on both the Bangladesh and Palauan sides are playing a part in this – that is, preferences for Bangladesh men to work overseas and send home remittances to their families, but also the Palauan employers' expectations that it is men who should perform such physical construction and agricultural work.

For Filipinos, the Philippines government policies and procedures for sending workers overseas also play a part in determining the gender identity of Filipino workers in Palau.⁵¹ For example, it appears that in recent years the Philippines Overseas Employment Administration (POEA) has been more carefully enforcing a long-standing prohibition on sending domestic workers to Palau.⁵² The POEA also issued a warning in 2022 on fraudulent recruitment practices of Filipino workers for supposed deployment to Palau and a direction to only transact with licensed recruitment agencies.⁵³

⁵⁰ For further discussion of migrant workers in Palau see: Nero, Karen L., Fermina Brel Murray, and Michael L. Burton, 'The Meaning of Work in Contemporary Palau: Policy Implications of Globalization in the Pacific,' *The Contemporary Pacific* 12(2)(2000): 319–348; Sandra S. Pierantozzi, 'Palauans and Guest Workers: An Opinion Paper,' *The Contemporary Pacific* 12(2)(2000): 349–358.

⁵¹ For an account of the history of Filipino workers in Palau, see Dean Alegado and Gerard Finin, 'Exporting People: the Philippines and Contract Labor in Palau', *The Contemporary Pacific* 12(1)(2000): 359–370.

⁵² POEA Advisory 07 (2005); POEA Advisory 21 (2017) on List of Restricted Markets.

⁵³ POEA Advisory 11 (2022).

3.4. Climate Change, Natural Resources and Emergency Management Policies

There has been increasing recognition of the importance of gender and gender mainstreaming in Palau's set of national climate change, natural resources and emergency management policies as they have evolved through time.

The *Sustainable Land Management Policy* (2012), which set forth a vision and overarching policy for sustainable land management in Palau, mentioned that consultations had been conducted with both men's and women's groups for the development of the policy. However, it did not have any other explicit mention of gender as an issue in land management.

Palau's *Climate Change Policy*, adopted in 2015, recognizes the global challenge of climate change and its likely impacts and priority risks in Palau. It outlines high-level mitigation and adaptation priorities. While the policy does recognize that vulnerable populations need to be considered in relation to relocation and emergency support, including in relation to use of emergency shelters, there is no specific mention of gender as a consideration.

The *National Disaster and Risk Management Framework 2010* (amended in 2016), covering risk reduction, preparedness and disaster responses, has brief mention of gender and of women as a vulnerable group in disasters.

The more recent *National Environmental Management Strategy (NEMS) 2022–2030* portrays Palau's priorities and actions to conserve and improve its environment for current and future generations. While focusing primarily on the technical aspects of environmental management and conservation, it does include recognition of principles of gender and social equity and the need for these to be integrated into ecosystem valuation, budget and planning reviews. It also requires gender disaggregated data to be collected. This Strategy also references the *Gender Mainstreaming Policy* (see Part 3.2 above) and requires mainstreaming of gender into environmental decision-making.

3.5. Youth Policy and Gender

The Ministry of Human Resources, Culture, Tourism and Development has developed the *Palau National Youth Policy* (2022–2027) which contains a vision and objectives for youth development. This *Youth Policy* is accompanied by the *National Youth Action Plan* which contains an implementation and accountability framework. The consultations and survey conducted for the Policy identified that key issues for youth in Palau are drugs and alcohol and mental health, as well as education and skills development leading towards employment, and better protection from violence and bullying. The *Youth Policy* does recognize the existence of particularly vulnerable groups of youth such as LGBTQI+ identities and youth living in rural areas. Some, but not all, of the statistics relied on for background information to the *Youth Policy* is gender disaggregated, and aspects of gender difference are outlined in the policy.

3.6 Disability Policy and Gender

Palau does not have a current national disability policy; the most recent was the *National Disability Inclusive Policy 2015–2020*. As reported to the Convention the Rights of Persons with Disabilities, the purpose of that Policy was to provide guidance and recommendations for the implementation matrix for all government, non-government organizations, disabled persons’ organizations, individuals, families and communities throughout Palau and to address and engage in the needs and services of persons and families with disabilities and build a more inclusive society for all persons in Palau.⁵⁴

On this issue, we can also reference the 2016–2025 *Pacific Framework for the Rights of Persons with Disabilities* (PFRPD), endorsed by the Pacific Islands Forum. The Framework includes ensuring gender equality and women’s empowerment as key aspects of policy development and service delivery, and recognizes that women with disabilities are a particularly vulnerable group.

3.7. ICT Policy and Gender

Palau is currently (2023) formulating a national Information and Communications Technology (ICT) Policy. The draft document includes mentions promotion of use of digital technologies by small- and medium-sized enterprises, including women-owned businesses, raising awareness of and addressing the impact of harmful online content on women and girls, developing digital skills and inclusion of underrepresented groups including women and girls, and including gender-sensitivity in any legislation drafted in association with the policy.

⁵⁴ Initial Report Submitted by Palau to the Committee on the Rights of Persons with Disabilities (2019), available at:

<http://docstore.ohchr.org/SelfServices/FilesHandler.ashx?enc=6QkG1d%2FPPrCAqhKb7yhsmWDdGv%2BXHi0XaVRqwVfATT6m8Htdbe%2FYWAPFFgVOB057LX4w1VuVD1DneqN0VzbYf1fEkzmXUMrhikt3WA8l%2F2S4KVhKrUCLEiS766b%2Fuq>.

4. Legal Gap Analysis

In this fourth part of the report, we provide an analysis of particular legal issues that relate to gender equality in Palau. The discussion is divided by issue, and notes where Palauan law does or does not match up to internationally agreed or other general principles for the protection and advancement of gender equality, especially CEDAW. This discussion is mainly based on a desk-based review of Palauan law and supplemented with some discussions with observers and other secondary information.

4.1. Citizenship, Political Rights and Leadership

Different rules apply to political rights and leadership mechanisms according to the relevant level of government in Palau. The following discussion is divided by (i) National, (ii) State and (iii) customary levels.

(i) National Level

The laws on citizenship in Palau are gender equal. Either parent can pass Palauan ancestry or citizenship to their children, whether born in or outside of Palau.⁵⁵ Since a constitutional amendment was passed in 2008, all Palauans can be dual citizens.⁵⁶ There is no loss of Palauan citizenship upon marriage to a non-Palauan. It should be noted that there is no naturalization permitted of foreign spouses or other family members, including foreign-born children adopted by Palauan parents. Similarly, migrant workers in Palau cannot become Palauan citizens.⁵⁷

All citizens aged eighteen (18) years and above who meet minimum residence requirements, regardless of gender, may vote in both National and State elections.⁵⁸

All citizens of Palau (except dual citizens) aged 25 years and over who meet minimum residency requirements may run for political office in the OEK,⁵⁹ and aged 35 years and over who meet minimum residency requirements as President or Vice President.⁶⁰ There are no laws which prohibit, limit or promote the participation of women or other minority groups in the national political process.⁶¹

⁵⁵ Constitution, art. III.

⁵⁶ Constitution, art. III (17th amendment, November 2008); 13 PNC § 121.

⁵⁷ 13 PNC § 131.

⁵⁸ Constitution, art. VII.

⁵⁹ Constitution, art. IX § 6.

⁶⁰ Constitution, art. VIII § 3.

⁶¹ Interestingly, the Second Palau Constitutional Convention held in 2005 considered but rejected, among the hundreds of proposals, some initiatives to ensure women's involvement in national politics. One proposal was to impose a quota in order to ensure that at least 1/3 of Senators would be women (Subsidiary Motion to amend Committee Proposal no.2-261, Second Palau Constitutional Convention, 51st Day Journal, July 6 2005). Another proposal considered adding the Council of Chiefs as a fourth branch of government which would specifically include both the Rubekul Belau (Council of Chiefs) and the Mechesil Belau (Women of Palau Council, i.e. the group of high-ranking female Chief's Counterparts) with the Council to be headed by the Ibedul and Reklai (paramount male chief title holders), and Bilung and Ebilreklai (matriarch female title holders) (Proposal no. 2-28). Notably, there was only one female delegate to the 2nd Constitutional Convention (Delegate Sandra Pierantozzi).

In practice, however, there has been low female representation in the OEK (both the House of Delegates and the Senate). Currently there is one female Senator and one female Member of the House of Delegates. See Table 1 below for further data:

Year	House of Delegates		Senate	
	Total	Female	Total	Female
2017	16	2	13	2
2019	16	2	13	2
2021	16	1	13	1
2023	16	1	13	1

Table 1: Number of Women in Palau’s National Congress (OEK) as per 1 January of each year. (Source: *Inter-Parliamentary Union (IPU), ‘Women in Politics’ data for various years*).

To date, there has been no female President, but there have been two female Vice Presidents, including the incumbent.

At the National level, as per the Constitution, the Council of Chiefs plays an advisory role to the President.⁶² This Council is composed of the highest ranking traditional chief from each of the 16 States as appointed by custom, and as a consequence of this all representatives of the Council are men. While by custom women clan title holders appoint the traditional chiefs, they are not themselves given roles in the national Council of Chiefs.

National Ministerial appointments are made by the President with the advice and consent of the Senate.⁶³ At present, of the eight Ministries only one is headed by a woman – i.e. the Minister of Justice J. Uduch Sengebau-Senior who is appointed to a ministerial portfolio by virtue of her election as Vice President.⁶⁴

Judges must have held Palau Bar membership for at least 5 years prior to appointment, and are appointed by the President on recommendation by the Judicial Nominating Commission.⁶⁵ Judges do not need to be citizens of Palau, and there have been foreign (US-trained) judges employed in the courts. There are no gender discriminatory provisions in relation to judicial appointments. As

⁶² Constitution, art. VIII § 6.

⁶³ Constitution, art. VIII § 5; 2 PNC § 103.

⁶⁴ Constitution, art. VIII § 2.

⁶⁵ Constitution, art. X § 8.

of December 2021, there were four female and four male full-time justices and judges of the courts, and eight male and one female part-time associate justices.⁶⁶

(ii) State Level

Each of the 16 States, based on their respective Constitutions, have various governance configurations and different approaches to appointing Governors and legislators, but all include some form of advisory or direct law-making roles for the state's highest ranked male chiefs.⁶⁷ In some States this involves traditional leaders forming a council of chiefs, in others they automatically become legislators, and in a few States the high chief is automatically appointed as Governor or in a co-executive role.⁶⁸ Due to the way that these traditional chiefs are appointed by custom, these roles would never be held by women.

One partial exception is found in the State of Koror (the most populous state) which has an explicitly stated advisory role for the traditional women leaders. Under its Constitution, Koror has a 'House of Traditional Leaders' consisting of representatives of the Ngarameketii and Rebekulkeldeu (the two chiefs councils of Koror) which can submit bills to the Koror State Legislature and advise the Governor on traditional law among other stated powers. In addition, there is the 'House of Kerengab' headed by Bilung and Mirair (the two leading female clan titles in Koror). All matters concerning women are to go to the House of Kerengab for appropriate consideration and action pursuant to traditional law. The House of Kerengab cannot legislate but may assist the House of Traditional Leaders.⁶⁹

Women have previously and currently do hold some elected positions as Governors or Legislators in the States (where elected positions are enabled by State Constitutions), but they are in the minority. In the State legislative bodies, as of 2013, 20.5% of the candidates were women and 20.2% of these candidates became legislators.⁷⁰ As of 2023, three States had female executive leaders: the Governor of Ngeremlengui State, the Governor and Lieutenant Governor of Hatohobei State, and the Lieutenant Governor of Sonsorol State. A count conducted by the Office of the Vice President in September 2023 found a total of 35 female legislators spread across the 16 States.⁷¹

⁶⁶ Palau Supreme Court, *Access to Justice as Covid-19 Challenges Continue: 2021 Court Annual Report* (2022), pp. 64–65.

⁶⁷ See: Donald R. Shuster, 'Custom Versus a New Elite: Palau's 16 State Constitutions,' *Journal of Pacific History* 29(2)(1994):188–202; Chief Justice Arthur Ngiraklsong, 'A Workable Balance between Democratic Principles and Principles of Palauan Traditional Governance in State Constitutions: What Fails and What Succeeds?' *University of Hawaii Law Review* 35(2)(2013): 909–920.

⁶⁸ For a useful summary of the different forms of inclusion of traditional leaders in each State government, see James E. Davis and Diane Hart, *Government of Palau: A Nation that Honors its Traditions* (Ministry of Education, Republic of Palau, 2002), pp. 202–203 (although note that the State of Ngatpang significantly altered its Constitution since that publication replacing traditional leaders with elected legislators).

⁶⁹ Koror State Constitution 2005, art. VI § 1.

⁷⁰ Ministry of Community and Cultural Affairs Republic of Palau and Ann Hillmann Kitalong, 'Stocktake of the Gender Mainstreaming Capacity of Pacific Island Governments: Republic of Palau' (2016).

⁷¹ An inaugural meeting of women elected leaders of National and State governments in Palau was held on 20 September 2023: Island Times, 'Meeting of Women in Elected Leadership' (26 September 2023), available at: <https://islandtimes.org/meeting-of-women-in-elected-leadership/>.

In accordance with the National Constitution, all the State Constitutions allow universal voting rights for adults aged 18 years and over (although some exclude serving prisoners and persons with mental incapacity). Some of the States differ in terms of minimum age required for eligibility to run for elected office. The State Constitutions also refer to and reiterate the fundamental rights set out in the National Constitution.

(iii) Customary Level

Customary women’s leadership in Palau takes the form of female title holders for each clan. Each village has a traditional council formed of the male chiefs (*klobak*) and one of female title holders (*klobak el dil*) from each of the clans in the village. As noted above, the highest ranked among the male chiefs form part of their respective States’ governance and the national Council of Chiefs.⁷²

These female title holders are selected through consensus by the *ourrot* (female senior strong members) of all lineages of the clan from among the matrilineal clan descendants and chosen based on their descent status and age as well as personal strength, capability and contribution to the clan.⁷³ It is these individual female title holders who select their preferred candidate for their counterpart male chief when the title becomes vacant and submit his name to the council of male chiefs (*klobak*) for approval.⁷⁴ This fact should be linked to the above discussion of male traditional leaders appointed to State governments and the national Council of Chiefs – they are appointed through these processes.

The highest ranked female title holders from each State are members of the ‘Mechesil Belau’ (Women of Palau Council). The Mechesil Belau holds an annual women’s conference (with the 30th Conference to be held in October 2023) and wields considerable influence. It has enjoyed success in advocating for national legislative amendments on a wide range of issues including health, environment and family matters, including the ban on prostitution, child protection provisions and the constitutional ban on same sex marriage.⁷⁵

Citizenship, Political Rights and Leadership Summary:

International gender equality principle	Source	Current legal protections in Palau
Equal right to vote in all elections and public referenda.	CEDAW, art. 7(a); ICCPR art. 25.	Yes (Constitution, art. VII).
Equally eligible for election to all publicly elected bodies.	CEDAW, art. 7(a); ICCPR art. 25.	Partially met for those positions which are elected, but not for positions allocated to traditional chiefs at National and State levels.

⁷² See Ketib Oldiais, ‘Comment: *Anderson-Berdick*, Democracy, and Tradition in the Republic of Palau’, *Wisconsin Law Review* 2021(6): 1581–1612.

⁷³ *Demei v. Sugiyama*, 2021 Palau 2.

⁷⁴ *Kelbiil ra Uchelkeyukl v. Ngiraingas*, 2018 Palau 15.

⁷⁵ UNWomen, *Gender Equality Brief for Palau* (March 2022). A list of laws passed that Mechesil Belau has advocated for is on file with the authors.

Equal right to participate in formulation of government policy, hold public office and perform all public functions at all levels of government.	CEDAW, art. 7(b); ICCPR art. 25.	Partially met due to the appointment of traditional male chiefs at State level, and to the Council of Chiefs at national level.
Equal right to participate in NGOs and associations concerned with public and political life.	CEDAW, art. 7(c).	Yes (Constitution, art. IV), but note that traditional men's and women's clubs have gender specific membership.
Equal right to represent one's country at the international level.	CEDAW, art. 8.	Yes (Constitution, art. IV).
Equal right to acquire, change or retain a person's nationality.	CEDAW, art. 9	Yes (Constitution, art. III).
Equal right to pass nationality to one's children.	CEDAW, art. 9	Yes (Constitution, art. III).

4.2. Education Rights

The Constitution provides that the state shall provide free public education for citizens from grades 1 to 12 as prescribed by law.⁷⁶ Since 1989, the law has also required the state to provide full educational opportunities to children with disabilities.⁷⁷ The law further provides for compulsory school attendance for children aged between six (6) and seventeen (17) years of age inclusive or until graduation from high school, unless excluded from school or exempted from attendance by the Minister of Education.⁷⁸ No distinction is made between girls and boys in this respect. The general view is that there is gender parity in access to education in Palau,⁷⁹ including for children with special needs due to US Federal funding programs.

The Ministry of Education *School Handbook* (2019) prohibits discrimination on the basis of sex and other identity factors. It also permits pregnant students to continue attending public schools. The *School Handbook* also prohibits all forms of bullying and harassment, including cyberbullying and sexual harassment, between students and between students and staff. However, private schools can have their own policies and there have been cases where pregnant students have been excluded from private schools in the past.

The Palau Community College, as the only provider of postsecondary education in Palau, by law cannot make any gender distinction in its offerings of educational programs to students,⁸⁰ and in practice has a higher percentage of female students compared to male (see Chart 1 below).

⁷⁶ Constitution, art. VI, as amended in 2008.

⁷⁷ 22 PNC ch 4.

⁷⁸ 22 PNC § 159.

⁷⁹ Asian Development Bank (ADB), *Private Sector Assessment for Palau: Policies for Sustainable Growth Revisited* (Asian Development Bank, 2017), p. 41.

⁸⁰ 22 PNC ch. 3.

The Palau National Scholarship Board provides scholarships and student loans for higher education in colleges and universities (of US\$1.5M per annum).⁸¹ The eligibility requirements are based on citizenship, full-time student status, enrollment in priority fields and GPA, and there are no specified gender requirements.⁸²

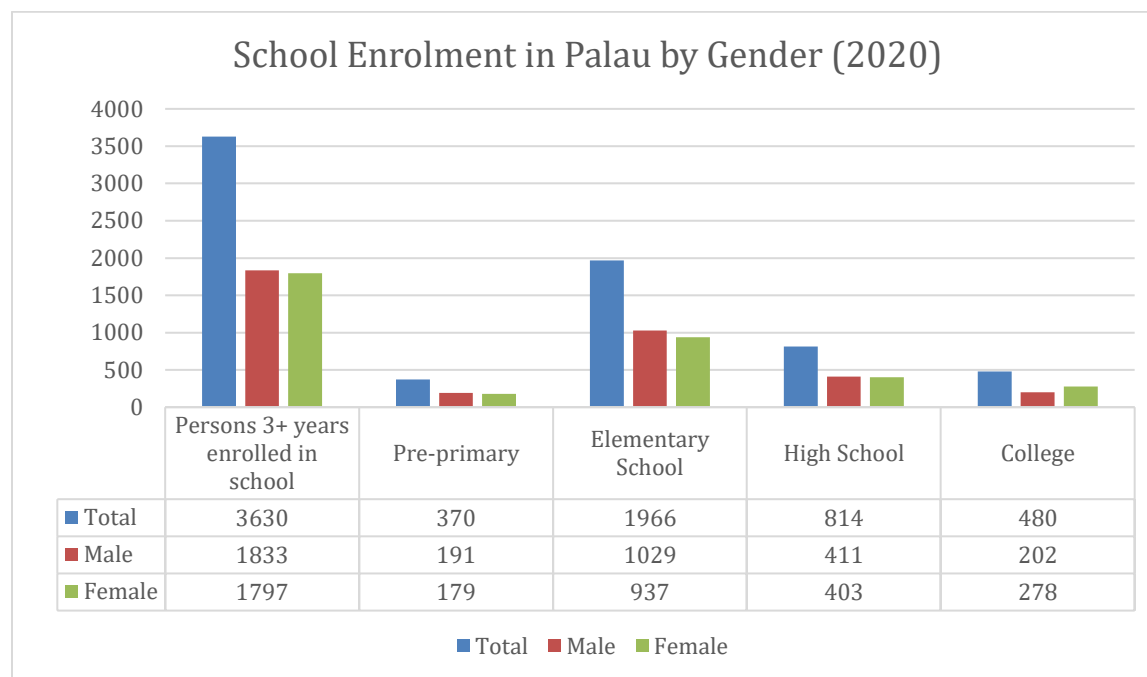


Chart 1: School Enrolment in Palau by Gender (Source: 2020 Census of Population and Housing of the Republic of Palau Table 17).

Education Rights Summary:

International gender equality principle	Source	Current legal protections in Palau
Equal rights in access to all levels of education, including in rural and urban areas, and access to the same curricula.	CEDAW, art. 10; CRC art. 28; CESCR art. 13.	Yes (Constitution arts. VI and IV).
Equal opportunities in access to scholarships and grants.	CEDAW, art. 10.	Yes, the right to equal access to government-provided opportunities can be implied from the Constitution art. IV. The Palau National Scholarships Board does not discriminate. In theory, it might be possible for private providers to discriminate.

⁸¹ 22 PNC ch. 2.

⁸² Palau National Scholarship Board Program Regulations (2015); Palau National Scholarship Board Regulations (2004).

Access to specific educational information to help ensure the health and well-being of families, including information and advice on family planning.	CEDAW, art. 10; CRC art. 24.	No legal provision for this, but the Women’s Health Clinical Protocol (2018) (see Part 4.5 below) provides for family planning information and service delivery. Sexual and reproductive health education is being delivered in schools. ⁸³
Ensure that female student drop-out rates are reduced	CEDAW, art. 10(f).	Public schools have a policy of allowing pregnant students to continue their schooling (but it is possible for private schools to decide otherwise).
Equal rights (of students) to participate in recreational activities, sports and cultural life	CEDAW, art. 13(c).	Yes (Constitution art. IV and Ministry of Education School Handbook (2019)).

4.3. Employment Rights

Employment rights are a key area of gender equality. The following chart (Chart 2) shows Palau labor force statistics by gender according to the 2020 census data:

⁸³ See: Republic of Palau, Ministry of Human Resources, Culture, Tourism and Development, *Palau National Youth Policy 2022–2027*.

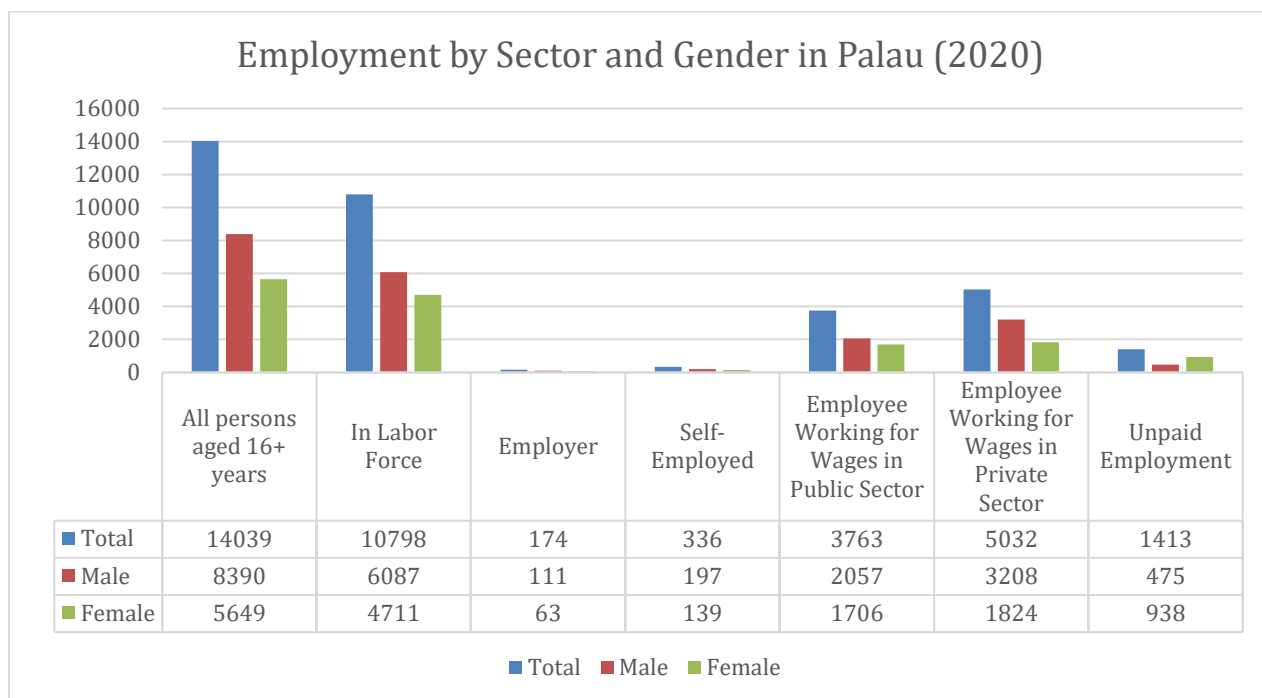


Chart 2: Employment by Sector and Gender in Palau (Source: 2020 Census of Population and Housing in the Republic of Palau, Table 65).

Slavery and involuntary servitude are prohibited except as punishment for a convicted criminal.⁸⁴

There are no forms of work prohibited or restricted based on gender under Palauan law (including night work, dangerous work, work during pregnancy or in the police force).⁸⁵ It should be noted, however, that prostitution, and promoting prostitution, is prohibited under the Penal Code.⁸⁶

There is no minimum age for employment of Palauan citizens stated in the law.⁸⁷ Non-resident workers must be aged between 21 and 60 years.⁸⁸

A new provision, added to the Penal Code in 2023 as part of amendments to strengthen the anti-human trafficking program in Palau, criminalizes intentional or knowing non-payment of wages in general.⁸⁹ If the unpaid wages amount to more than \$2000 then this constitutes a Class C felony which carries a penalty of up to 5 years.

⁸⁴ 1 PNC § 402.

⁸⁵ A wage differential for hazardous work is due to police officers and other government employees (33 PNC §§ 413–414), and other employers must pay a wage differential to Palauan citizens working with or near explosives (33 PNC §§ 3021, 3022).

⁸⁶ 17 PNC § 4801, § 4803.

⁸⁷ Exceptions to this are that the minimum age for employment as a sailor engaged in foreign trade is set at 16 years (7 PNC § 505), and the minimum age for employment in premises serving alcohol is 21 years (11 PNC § 1064).

⁸⁸ Division of Labor Rules and Regulations (February 2019), § 6.2.

⁸⁹ 17 PNC § 2006.

There are no explicit protections under the law for any type of worker in relation to hiring or firing a pregnant woman, although it is possible that the Constitution, art. IV § 13, might be interpreted broadly to imply this protection.⁹⁰

It is unlawful for an employer to discriminate against a person with a disability with respect to employment, for reasons relating to the person's disability.⁹¹

Beyond these basic provisions, a four-way distinction is made between: (i) National Government employees; (ii) State Government employees; (iii) Private sector workers; and (iv) Non-resident workers in the private sector, in terms of the legal employment protections afforded to them. These four categories and their associated rights are addressed in turn below.

(i) National Government Employees

Government employees under the National Public Service System enjoy a range of rights relating to pay scales, leave entitlements and security of tenure unless dismissed for stated forms of misconduct. There is a preference for employing Palauan citizens but non-citizens can also be government employees.⁹² Employees on non-permanent contracts are usually excluded from this system.⁹³

For national government employees, the law establishes general principles of non-discrimination in hiring⁹⁴ and firing⁹⁵ on the basis of sex among other factors. The merit principle of equal opportunity for all regardless of sex⁹⁶ and read in light of Constitutional provisions of non-discrimination (discussed above in Part 1.1), might be interpreted to imply the principle of equal wages for equal work performed by men and women, although this is not explicitly stated anywhere in the law. There is no provision for, or practice of, positive discrimination or for promoting equal opportunity for underrepresented groups when advertising new employment positions.

There have not been any reported court cases interpreting these merit principles of equal opportunity in national government employment in Palau. From our consultations, it also appears that there is little training provided to public service decision-makers and human resources officers to ensure that the merit principles are adhered to in hiring and other aspects of employment.

⁹⁰ Health Impact Assessment Working Group, 'Rapid Health Impact Assessment of the Maternity Leave Bill (S.B. 9-20-SD2): Maternity Leave in the Palau Workforce' (Report Compiled by the Health Impact Assessment Working Group, February 10, 2013), p. 16.

⁹¹ 33 PNC § 3034.

⁹² 33 PNC § 203.

⁹³ 33 PNC § 205.

⁹⁴ 33 PNC § 202.

⁹⁵ 33 PNC § 424.

⁹⁶ 33 PNC § 202.

Mandatory retirement for most government workers (unless they belong to an exempted category such as judges) is 60 years of age.⁹⁷ There is no difference for men and women in relation to retirement age.

Permanent female national government employees do enjoy maternity protections. These employees are entitled to one month of paid maternity leave in one calendar year. This paid maternity leave will not change the employee's service anniversary date and employees who take maternity leave are entitled to return to their positions with full rights and privileges.⁹⁸ Permanent female employees may also be granted unpaid maternity leave for a period of up to five months in addition to the one month of paid leave. After using this unpaid leave, an employee is entitled to return to their position with full rights and privileges, except that this period will affect the waiting period calculation for the purposes of grade increase. It is the employee's immediate supervisor who is responsible for approving unpaid maternity leave requests.⁹⁹

Note that the restriction of maternity leave rights to permanent government employees necessarily excludes those contracted government employees who are funded by specific grants or other funding.

There is no provision for paternity or partner leave when a child is born, although some government agencies may nonetheless provide paternity leave informally.

The law and regulations do not provide any further rights to flexible work in relation to breastfeeding or seeing to children's needs. There is also no paternity leave provided in the law.

(ii) State Government Employees

Some of the 16 States, particularly the larger ones, have their own rules in relation to the working conditions that their respective public service employees enjoy.

We were able to examine the Koror State 'Policy & Procedures Manual' regulating its permanent public service employees. These provide permanent female employees with the right to take maternity leave of 1 month with pay and an additional 5 months without pay.¹⁰⁰ Unlike the national level public service, there is no explicitly stated right to return to a person's previous position following such maternity leave. There is also no provision for paternity or partner leave when a child is born.

Several other States have also apparently adopted similar provisions in relation to maternity leave.¹⁰¹

⁹⁷ 33 PNC § 2040.

⁹⁸ 33 PNC § 427; Public Service Regulations 1997, § 18.3(h).

⁹⁹ Public Service Regulations 1997, § 18.4.

¹⁰⁰ Koror State Government, *Policies & Procedures Manual* (2008) (Executive Order 08-04), § IV(7).

¹⁰¹ 'Rapid Health Impact Assessment of the Maternity Leave Bill (S.B. 9-20-SD2): Maternity Leave in the Palau Workforce,' Report Compiled by the Health Impact Assessment Working Group, February 10, 2013), p. 6.

The Koror State ‘Policy & Procedures Manual’ does not reference any principles of non-discrimination on the basis of sex or other identity factors, or any other gender issues such as allowance for breastfeeding.

The States that do not have formal public service employment regulations are likely to be employing officers on either a contractual or informal basis (these workers would therefore be included in the private sector – see section below).

(iii) Private Sector Workers

The category of private sector workers includes all workers other than permanent National and State government employees, and includes those working on temporary contracts for the government or working in semi-government agencies and public corporations¹⁰² which do not fall under the laws and regulations for permanent government employees described above. Non-resident workers are part of the private sector but have some additional protections compared to local Palauan workers (see further discussion below).

Private sector workers have almost no protections under the law or regulations in Palau. The main protection is the requirement to pay the minimum wage which, since 2013, has been set at \$3.50 per hour. The minimum wage does not apply to up to two employees of a farmer, up to two individuals employed as domestic helpers, employees who are students, workers aged below 20 years of age on probationary contracts and employees of non-profit organizations.¹⁰³ Workers’ housing and meals can be counted towards payment of the minimum wage.¹⁰⁴ As noted in Part 2 above, there are current political debates about whether an increase to the minimum wage is viable and draft Bills are under consideration.

Common law principles otherwise apply to employment contracts and their interpretation, although disputing parties may be able to draw on constitutional principles of non-discrimination.¹⁰⁵

Officials and other employees at the Palau Community College (who are not government employees) have special protection from discrimination in hiring and firing on the basis of sex and other personal identity factors.¹⁰⁶

¹⁰² Note that the Palau Public Utilities Corporation (PPUC), Palau’s electricity and water corporation which is government-owned, has introduced gender-sensitive human resource management procedures, including flexible working arrangements, introduction of parental leave, and workplace harassment and discrimination policies (including on gender-based discrimination and sexual harassment). See: Asian Development Bank (ADB), ‘Proposed Policy-Based Loan for Subprogram 2 Republic of Palau: Palau Public Utilities Corporation Reform Program’ (July 2022), p. 4. As another example, the Palau Community Action Agency also reportedly provides maternal and paternity leave, and allowance for breastfeeding time, for employees.

¹⁰³ 13 PNC § 1306.

¹⁰⁴ 13 PNC § 1306(d).

¹⁰⁵ *Ngotel v. Duty Free Shoppers Palau, Ltd.*, 20 ROP 9 (2012).

¹⁰⁶ 22 PNC § 322.

Beyond this, there are no labor protections for private sector workers such as annual leave or maternity or paternity leave (other than what may be included in individual contracts of employment).

In a survey conducted in 2013,¹⁰⁷ in relation to maternity leave, member businesses of the Palau Chamber of Commerce reported:

- 25% of businesses offer up to one month of paid maternity leave
- 25% offer unpaid leave of varying periods
- 19% allow women to use their accrued annual and sick leave in lieu of maternity leave
- 19% allow no maternity leave
- 13% have other (unspecified) arrangements.

(iv) Non-Resident Workers in the Private Sector

The brief labor provisions in Title 13 PNC and in the ‘Division of Labor Rules & Regulations’ (2019) mostly apply to non-resident (foreign) workers in the private sector and regulate hiring processes and issuance of work permits and visas, sets a schedule of fees, and the required living conditions that employers must provide. Non-resident workers must be provided with a safe workplace,¹⁰⁸ and are entitled to one day off per week.¹⁰⁹ The minimum wage applies to most private sector employees including non-resident workers (as set out above). A key restriction in the law is that non-resident workers may only be employed by their initial sponsoring employer and cannot transfer their employment, and nor may they be ‘loaned’ out to other employers.¹¹⁰ The Office of Labor Compliance is authorized to enforce these provisions.

The requirements for non-residents’ living and sanitary conditions, including provision of shelter and toilets, do not specify any different or separate requirements for men and women.¹¹¹

As is the situation for the private sector more generally, there are no anti-discrimination protections on the grounds of sex or gender, but as noted above in Part 3.3, there are pronounced differences in the numbers of male and female non-resident workers, particularly for the Bangladesh population. There are no maternity or paternity leave provisions.

Non-resident workers are required to declare their marital status and identity of any children in their application for a work visa.¹¹² Only workers earning above \$15,000 may apply to bring dependents with them to Palau.¹¹³ Notably, the male workers from Bangladesh tend to come to Palau alone without accompanying family.

¹⁰⁷ ‘Rapid Health Impact Assessment of the Maternity Leave Bill (S.B. 9-20-SD2): Maternity Leave in the Palau Workforce,’ Report Compiled by the Health Impact Assessment Working Group, February 10, 2013), pp. 6, 18.

¹⁰⁸ Division of Labor Rules & Regulations (2019), art. 6.5.

¹⁰⁹ Division of Labor Rules & Regulations (2019), art. 6.10.

¹¹⁰ 13 PNC § 1339; Division of Labor Rules & Regulations (2019), art. 6.1.

¹¹¹ Division of Labor Rules & Regulations (2019), part VIII.

¹¹² 13 PNC § 1338.

¹¹³ 13 PNC § 1343.

Employment Rights Summary:

International gender equality principle	Source	Current legal protection in Palau
Right to work as an inalienable right of human beings	CEDAW, art. 11(1)(a); CESCR, art. 6.	Not explicitly stated in the law.
Equal right to employment opportunities	CEDAW, art. 11(1)(b); CESCR, art 7; ILO Discrimination (Employment and Occupation) Convention 1958 (no. 111).	Protected for permanent government employees only (33 PNC § 202).
Right to free choice of profession and employment.	CEDAW, art. 11(1)(c).	Implied by the Constitution, art. IV §11, which prohibits involuntary servitude except to punish crime.
Right to equal remuneration for equal work.	CEDAW, art. 11(1)(d); CESCR, art. 7; ILO Equal Remuneration Convention 1951 (no. 100).	Not explicitly protected. Might be implied by the Constitution, art. IV § 5.
Right to protection of health and safety including safeguarding the function of reproduction.	CEDAW, art. 11(1)(f).	Only employers of non-resident workers have the requirement to provide a safe workplace (Division of Labor Rules & Regulations 2019).
Pregnant or breastfeeding women are not obliged to perform work which may be prejudicial to the mother or child's health.	ILO Maternity Protection Convention (no. 183), art. 3.	No protection.
Period of maternity leave of not less than 14 weeks, including 6 weeks leave after the birth of a child.	ILO Maternity Protection Convention (no. 183), art. 4; CEDAW, art. 11(2)(b).	Only permanent government employees are entitled by law up to 6 months maternity leave (1 month of which is paid).
Cash benefits or social assistance funds shall be provided to women taking maternity leave.	ILO Maternity Protection Convention (no. 183), art. 6.	Only provided to permanent government employees and only for 4 weeks.
Unlawful for an employer to terminate the employment of a woman during pregnancy or during maternity leave or period immediately following maternity leave.	ILO Maternity Protection Convention (no. 183), art. 8(1); CEDAW art. 11(2).	Protection against termination during maternity leave is only provided to permanent national government employees. There is otherwise no protection against termination for pregnancy.
A woman is guaranteed the right to return to the same position or an equivalent position paid at the same rate at the end of her maternity leave.	ILO Maternity Protection Convention (no. 183), art. 8(2).	Only permanent national government employees have this right.

Maternity does not constitute a source of discrimination.	ILO Maternity Protection Convention (no. 183), art. 9.	No explicit protection.
Daily breaks or reduction of working hours to facilitate breastfeeding.	ILO Maternity Protection Convention (no. 183), art. 10.	No protection.

4.4. Employees’ Social Security

All employees (including government employees, elected officials, private sector workers, non-resident (migrant) workers and self-employed) working in the Republic of Palau must be covered by the Palau Social Security system and must have a valid Social Security Number. Employees must contribute 7% of their wages as premiums and this is deducted and paid directly by employers.¹¹⁴ This amount should also be matched by an employer contribution.¹¹⁵ Those who are self-employed should pay their own contributions, and they are encouraged to do so even if on a low income (with a minimum \$300 in remuneration per quarter).¹¹⁶

The Social Security system offers five types of benefits to eligible insured individuals or their qualified survivors: (i) retirement pension (old age); (ii) permanent disability benefits; (iii) surviving spouse’s insurance; (iv) surviving child’s insurance; and (v) lump sum death benefits. Note that this does not include unemployment or illness insurance, and that it is not possible to gain early access to the fund in any other extenuating circumstances.

Palau’s social security system does not directly differentiate between genders in terms of access and eligibility. All insurance benefits including surviving spouse’s insurance benefit, surviving child’s insurance benefit and the old age insurance benefit are equally available to males and females. The old age insurance benefit is available at 60 years of age to both men and women,¹¹⁷ matching the age of retirement for national government employees (discussed above at Part 4.3(i)).

The surviving spouse benefit will be paid to the surviving spouse from a customary marriage so long as their marriage is registered at the court or is otherwise evidenced by an affidavit¹¹⁸ (see further discussion of customary marriage in Part 4.8 below).

¹¹⁴ 41 PNC § 743.

¹¹⁵ 41 PNC § 744.

¹¹⁶ 41 PNC § 741.

¹¹⁷ 41 PNC §§ 753, 755–56.

¹¹⁸ See the case of *Glover v. Lund*, 2018 Palau 10, which involved a claim for a surviving spouse’s insurance benefit based on a customary marriage. In this case the applicant wanted to register her previous customary marriage in order to access the surviving spouse benefit but failed as the court found that a customary divorce had taken place. Note also that the Trial Division of the Supreme has jurisdiction to confirm customary marriages (21 PNC § 104). See also https://ropssa.pw/pgs/applying_for_ss_benefits.html#ui-id-7 explaining that support from the deceased’s relatives would serve as evidence of a customary marriage.

The constitutional prohibition on same-sex marriage consequently means that same-sex couples cannot access the surviving spouse insurance benefit. De facto couples whose relationship does not amount to a customary marriage are also excluded.

The surviving child’s insurance benefit may be paid to both biological and adopted children – whether the adoption was effected legally or under Palauan custom, or by providing proof that the child was dependent on the wage earner. The child must be unmarried. A biological child who has been adopted by another family is not eligible for the benefit.¹¹⁹

Although there is no direct gender discrimination, the standard length of time required for a participant to have contributed to the Social Security scheme in order to be ‘fully insured’, ‘currently insured’ and ‘permanently insured’ is likely to disadvantage a person who temporarily exits the workforce for pregnancy and child rearing reasons. That is, there are no special allowances in the regulations to acknowledge the greater difficulty that women with children may have in reaching these thresholds.¹²⁰ Permanent government employees and any private sector workers who have paid maternity leave rights would continue to have their contributions covered for that specified period, but for all others the clock effectively stops until they eventually return to work.

Employees’ Social Security Summary:

International gender equality principle	Source	Current legal protection in Palau
Equal right to social security, particularly in cases of retirement, unemployment, sickness, invalidity and old age and other incapacity to work, as well as the right to paid leave.	CEDAW, art. 11(1)(e).	The Social Security System does not discriminate between men and women, but women who take time out of the workforce may experience more difficulties in meeting ‘insured’ status requirements.
National social security systems should apply principles of non-discrimination, gender equality and responsiveness to special needs.	ILO Social Protection Floors Recommendation no. 202.	No explicit statement of non-discrimination principles, but general Constitutional rights may apply. There is no responsiveness to special gender needs in interaction with the social security system.

4.5. Healthcare

The general constitutional provisions of equal treatment outlined at Part 1.1 above would apply in the health sector. There is no explicit legal discrimination between men and women in regard to access to healthcare or ability to join the health professions.

¹¹⁹ 34 PNC § 702(3).

¹²⁰ 34 PNC § 702. The World Bank also notes this absence in its ‘Women, Business and the Law Index Palau’.

The *Women's Health Clinical Protocol* (2018) sets out family planning service protocols which include contraceptive and reproductive health services for men, women and adolescents. The influence of US Federal funding rules (Title X) is noted here. It states that priority should be given to low-income individuals or those particularly at risk of unintended pregnancy, but otherwise services should be provided without regard to identity factors. Services for adolescents (minors) are to be 'youth-friendly' and accessible. These family planning services are provided for free by the Ministry of Health,¹²¹ and access to pregnancy care is said to be good with 100% of births attended by a skilled medical professional and has a maternal mortality rate of 0.¹²²

Abortion is prohibited with no exceptions in Palau. Both the pregnant woman and the health provider would breach the law for deliberately undertaking an abortion.¹²³ While a range of contraceptive methods are offered, the 'morning after pill/Plan B' is not specifically mentioned in the *Women's Health Clinical Protocol*. We recognize that abortion is a sensitive issue of morality, but also note that full prohibitions as stipulated in the law in Palau can drive women to seek unsafe alternatives or travel overseas. It can also criminalize the situation where a pregnancy termination is necessary to save the mother's life.

The *Healthcare Providers Family Violence Policies Procedures and Protocols* (2016) set out medical protocols for addressing the needs of families where violence is present. These protocols cover both women and men. These procedures require medical professionals to explain the violence is not the fault of the victim and contains suggested ways of sensitively eliciting information about violence. Referral pathways to specialist services are mapped out.

Healthcare providers have mandatory reporting requirements in relation to any wounds or death¹²⁴ and signs of child abuse.¹²⁵

Although no comprehensive data appears to be available, anecdotally males commit suicide at a higher rate than females in Palau suggesting that mental health support and services may not be adequately reaching men.

There have been some reports that LGBTQI+ persons have felt uncomfortable with public health service providers (see further discussion at Part 4.10 below).

Administered in a similar way to the employees' Social Security fund (described above at Part 4.4), Palau also has a public HealthCare Fund consisting of two components: the individual Medical Savings Account (MSA) and the National Health Insurance (NHI).¹²⁶ These two funds are funded together through mandatory employee (2.5% of earned income) and employer (also 2.5%) contributions. Individuals may also voluntarily contribute to the funds, and may also

¹²¹ An academic study found that 55% of contraceptive demand is satisfied by modern methods in Palau, see: Angela Dawson, et al., 'How do Pacific Island Countries Add Up on Contraception, Abortion and Reproductive Coercion? Guidance from the Guttmacher Report on Investing in Sexual and Reproductive Health,' *Reproductive Health* 18(68):1–8.

¹²² UNWomen, *Gender Equality Brief for Palau* (March 2022).

¹²³ 17 PNC § 1310.

¹²⁴ 17 PNC § 1309.

¹²⁵ 21 PNC § 603.

¹²⁶ 41 PNC ch 9.

voluntarily add additional funds to their own MSA. The government covers subscription costs for the NHI for individual citizens who are aged sixty (60) and older and not working, or persons who are disabled and not working. Benefits are lost if contributions for two consecutive quarters are missed. The funds cover both local and off-island medical expenses within defined parameters.

There are no explicit gender differences in the way that these two healthcare funds are set up and administered, however, women who leave the workforce for pregnancy and/or child-rearing reasons would need to keep up voluntary payments to the funds in order to retain eligibility for benefits.

Healthcare Summary:

International gender equality principle	Source	Current legal protection in Palau
Eliminate discrimination against women in the field of healthcare in order to ensure, on a basis of equality of men and women, access to health care services, including those related to family planning.	CEDAW art. 12(1).	The general Constitutional provisions of anti-discrimination combined with healthcare protocols generally provide for equality of access to healthcare for men and women.

4.6. Taxation

Taxation systems around the world can have a range of explicit and implicit gender biases.¹²⁷ This Report covers explicit legal biases, and to a more limited extent implicit gender biases in the taxation system as this would require much more detailed economic analysis. There are no existing studies of Palau’s taxation system to draw on.

Palau’s personal income taxation system operates using a bracketed scale approach, with all income from employment taxed individually and withheld by the employer.¹²⁸ The tax-free threshold is \$15,000 per year – any person earning less than \$15,000 per annum will have any tax withheld from their salary returned.¹²⁹ There are no separate or amalgamated calculations for married couples or households, and no accounting for differences in relation to full-time or part-time work.

There are two explicit exemptions from personal income tax on wages for retired traditional chiefs and any wages received from their obligations and also for State Legislators for wages earned in service as State Legislators.¹³⁰ As noted above in Part 4.1 above, traditional chiefs are male roles, while in practice there are few female State Legislators.

¹²⁷ See, e.g., OECD, *Tax Policy and Gender Equality: A Stocktake of Country Approaches* (2021).

¹²⁸ 40 PNC ch 11.

¹²⁹ 40 PNC § 1104.

¹³⁰ 40 PNC § 1105.

Tax deductions for the purposes of personal income tax are available for money paid for the schooling and tuition of children (deducted from one parent only) and for contributions to non-profit organizations.¹³¹

Since January 1 2023, Palau has implemented a 10% goods and services tax (called the PGST).¹³² While there are some specific exemptions, it should be noted that there are no exemptions for feminine hygiene (period) products or other gender-specific needs as occurs in some other GST systems.

Another aspect of Palau’s taxation system that may have gender different implications is the tax on remittances sent overseas by foreign workers.¹³³ This tax may fall more heavily on male non-resident workers given the high proportion of male Bangladesh workers in particular (see Part 3.3 above).

Palau also collects business taxes (business profit tax, and gross revenue tax for non-PGST registered businesses), excise, hotel room taxes, land transfer proceeds fees, and a carbon tax on importation of petroleum.

*Taxation Summary:*¹³⁴

International gender equality principle	Source	Current legal protection in Palau
Tax provisions should not explicitly reference gender or worsen gender biases present in society.	OECD (2021).	Mostly no explicit gender biases in Palau’s tax system, saving exemptions for retired traditional chiefs and State legislators.
Tax provisions that are ostensibly gender neutral should not interact with the different economic and social realities of men and women in ways that worsen gender biases present in society.	OECD (2021).	The impact of any implicit biases in Palau’s tax system requires further research beyond the scope of this report.

4.7. Social Subsidies

The Palau National Government provides a number of ad hoc social subsidies as follows:

- A ‘Child Raising Subsidy’ of \$100 per child per annum. This is a means tested subsidy for Palauan citizens earning below \$15,000 per annum, and only one person (parent/guardian with legal custody) can claim per child.¹³⁵ The law does not differentiate between parents

¹³¹ 40 PNC § 1104.

¹³² 40 PNC ch. 12.

¹³³ 40 PNC § 1408.

¹³⁴ As there are no international law principles of gender equality in taxation systems, we refer here to the principles contained in OECD, *Tax Policy and Gender Equality: A Stocktake of Country Approaches* (2021).

¹³⁵ 34 PNC § 8506 (first introduced via RPPL 11-11 Tax Reform Act in 2021).

on this issue. This subsidy is administered by the Ministry of Health and is being disbursed for the first time in 2023. Note that the introduction of this subsidy caused many parents to suddenly need to obtain legal documentation for their children – and in practice this subsidy may exclude parents with customarily adopted children who do not have correct paperwork (see also discussion at Part 4.12 below).

- A disability monthly stipend is paid to persons who are homebound or wheelchair bound or blind. This stipend cannot be received at the same time as social security benefits.¹³⁶ There are no gender or other identity factors for this issue.
- A social assistance payment is available for persons engaged in the informal *makit* (market) sector. Recipients must be Palauan citizens, not employed in the formal sector, and involved in the informal *makit* sector with a gross revenue of \$15,000 or less. The payment will equal 4% of the citizen’s total *makit* revenue, subject to a maximum payment of \$600.¹³⁷ Note that the *makit* sector is typically characterized by women who sell their agricultural produce and prepared food at traditional markets, although men may also sell fish.
- An Emergency Revolving Housing Loan Fund is available to private house owners whose homes have been destroyed or rendered uninhabitable as a result of natural disaster or fire.¹³⁸
- Affordable housing loans are also available for low-income families including first-time homeowners or displaced persons through the Palau Housing Authority,¹³⁹ and the National Development Bank of Palau.¹⁴⁰
- A ‘Lifeline’ Subsidy for Electric, Water and Wastewater helps low income households pay their utility bills. In addition, all residential customers currently have their electricity bill covered by \$0.10 for each KWH up to 500 KWH.¹⁴¹

Social Subsidies Summary:

International gender equality principle	Source	Current legal protections in Palau
Equal right to family benefits.	CEDAW, art. 13.	Palau’s social subsidies do not exclude any particular gender.
Equal right to bank loans, mortgages and other forms of financial credit.	CEDAW, art. 13.	There are no discriminatory provisions preventing women’s access to loans or other forms of

¹³⁶ 34 PNC § 8503.

¹³⁷ 34 PNC § 1106.

¹³⁸ 34 PNC § 7010.

¹³⁹ 34 PNC § 7012.

¹⁴⁰ 26 PNC § 128.

¹⁴¹ RPPL 11-18 and RPPL 11-24.

		credit. However, there are no programs to specially support financial inclusion of women.
Women in rural areas have equal access to social security.	CEDAW, art. 14(2)(c).	The social subsidy system in Palau does not directly discriminate against rural women, but there also does not appear to be any special efforts to reach rural women.
National social security systems should apply principles of non-discrimination, gender equality and responsiveness to special needs.	ILO Social Protection Floors Recommendation no. 202.	The available social subsidies do not have any explicit gender discriminatory provisions. They are responsive to socio-economic status through means testing, though issues with formal identification for customarily adopted children may arise.

4.8. Family Relations, Marriage and Divorce

As noted above, the Constitution states the general principle that, ‘the government shall provide for marital and related parental rights, privileges and responsibilities on the basis of equality between men and women, mutual consent and cooperation’.¹⁴² However, the Constitution also provides for an exception to the principle of equality under the law in relation to domestic relations.¹⁴³ This exception does flow through into national legislation on some issues.

In terms of legal adulthood, all persons regardless of gender residing in the Republic of Palau attain their age of majority at 18 years.¹⁴⁴ As no distinction is made here between males and females, there are no restrictions, for example, on women having separate rights from their husband in relation to legal personhood, entering into contracts or making a will.¹⁴⁵

The age of consent to sexual relations can be inferred from the Penal Code provision on statutory rape. It is a crime to engage in an act of sexual penetration with a person less than 15 years of age, or a person between 15 and 17 years of age where the perpetrator is more than 5 years older than the victim.¹⁴⁶ (See further discussion at Part 4.11 below on gender-based violence.)

Civil marriages in Palau may be effected through a formal license issued by the President or their designee and then solemnized and registered (primarily for marriages involving one or two non-citizens),¹⁴⁷ or through custom and then registered (for marriages between Palauan citizens).¹⁴⁸ To

¹⁴² Constitution, art. IV § 13.
¹⁴³ Constitution, art. IV §5.
¹⁴⁴ 21 PNC § 105.
¹⁴⁵ 25 PNC § 102.
¹⁴⁶ 17 PNC § 1603.
¹⁴⁷ 21 PNC §§ 202; 203.
¹⁴⁸ 21 PNC § 204.

determine if a customary marriage has taken place, a court will consider the full set of circumstances surrounding the couple, which may include whether customary gifts have been exchanged, and evidence that the couple has been living together and performing the clan obligations of married couples. The absence of registration will not necessarily lead to a finding that a customary marriage has not taken place.¹⁴⁹

The law on the minimum age of marriage in Palau has two separate rules based on citizenship: (i) two Palauan citizens marrying each other and (ii) a Palauan citizen marrying a noncitizen or two noncitizens marrying one another. In the first case (i) of two Palauans citizens marrying, there is no specified minimum age so long as the marriage conforms to recognized custom.¹⁵⁰ While available data on marriage rates amongst the adolescent population group are lacking,¹⁵¹ it is generally reported that child marriage is not common or may never happen in Palau due to social pressure to at least complete school education prior to marriage. Nonetheless, the absence of a stated minimum age has been of concern to observers for some time.

In the second case (ii), the minimum age of marriage is 18 years for a Palauan male marrying a noncitizen, while a Palauan female marrying a noncitizen must be at least 16 years of age and have the consent of her parents if she is not yet 18 years of age.¹⁵² These minimum ages also apply for two non-citizens marrying in Palau. This provision, too, has been of concern to observers due to the lower minimum age for females.¹⁵³

Marriages in Palau may be formally ended through annulment or divorce. A marriage may be annulled if there were grounds at the time of the marriage to make it illegal and void or voidable although cohabitation following the marriage may result in a refusal of the court to grant an annulment.¹⁵⁴

Divorce requires that certain grounds be present, as follows: adultery, cruel treatment or neglect, wilful desertion for not less than one year, sentencing to prison of three years or more, insanity, contracting leprosy, two consecutive years of separation or willful neglect by the husband to provide suitable support for his wife when failure to do so is because of his idleness, profligacy or dissipation.¹⁵⁵ It is therefore clear that Palauan law does not allow mutually agreed no-fault divorce until two years of separation have passed. The final listed ground for divorce contains an explicit gender difference in the assumption that it is the husband who has the duty to provide for his wife.

¹⁴⁹ *Ngiraremiang v. Ngiramolau*, 4 ROP Intrm 112 (1993).

¹⁵⁰ 21 PNC § 204 (this provision is a direct copy from the Trust Territory Code 39 TTC § 51) (see case *In Re Airam*, App Div July 1976).

¹⁵¹ UNICEF, *Situation Analysis of Children in Palau* (UNICEF, Suva, 2017), p. 30.

¹⁵² 21 PNC § 201.

¹⁵³ This gender difference in the minimum age for marriage was raised as a concern by the Committee on the Rights of the Child in 2018: <https://www.ohchr.org/en/press-releases/2018/01/committee-rights-child-examines-report-palau>.

¹⁵⁴ 21 PNC § 311.

¹⁵⁵ 21 PNC § 331.

Annulments and divorces can also occur via custom.¹⁵⁶ If a person disputes that the annulment or divorce has been properly settled by custom then they may petition the court for a decision.¹⁵⁷ In such a case the court would apply customary principles to determine if a customary divorce had been effected (rather than applying the grounds for a civil divorce as set out above).

Some principles of customary divorce were determined in the case of *Glover v. Lund*¹⁵⁸ where the court held that under Palauan custom, marriages can be dissolved through the acts of either the husband or wife, including if either spouse commits adultery. If the marriage was terminated by the husband, he should pay *olmesumech* (customary marriage severance payment) to the wife and her family. If the wife committed adultery or no longer wished to remain married to her husband, then the payment of *olmesumech* by the husband is not necessary, and the woman generally leaves the marriage with nothing. The court therefore concluded that under Palauan traditional custom, an *olmesumech* payment is only required if the divorce is precipitated by the husband's actions.

Regarding custody of minor children in the event of an annulment or divorce, the court may make such orders as it deems that justice and the best interests of all concerned may require.¹⁵⁹ The interpreting case law to guide decisions on this point has consistently applied a framework of considering the totality of circumstances including: 'the wishes of the parents; the wishes of the child; interaction and interrelationship of the child with his parents, siblings, and other persons who may significantly affect the child's best interests; adjustment to home, school, community; and the mental and physical health of all individuals involved'.¹⁶⁰ There is a presumption that ideally joint custody will be awarded, or that the parent without custody will have visitation rights, so that the child may have a meaningful relationship with both parents.¹⁶¹ There is no legal presumption that a particular parent based on their gender (mother or father) will be awarded custody. It should be noted that in this area, US case law has been very influential on the Palauan courts.

Following marriage dissolution, the law requires parents to continue to support minor children, both biological and adopted, and the court may order a particular amount of money be paid for their support.¹⁶² Although a literal reading of the law may suggest that it is only the parent at fault in the divorce who must provide support, the court has interpreted the relevant provision so as not to require any fault (such as adultery).¹⁶³ The court's ultimate objective in ordering child support is to secure the needs of the child commensurate with the ability of the parent to meet those needs.¹⁶⁴

The law also provides that in relation to an annulment or a divorce, the court may make orders for the disposition of either or both parties' interest in any property or for the support of either party.¹⁶⁵

¹⁵⁶ 21 PNC § 103.

¹⁵⁷ 21 PNC § 104.

¹⁵⁸ *Glover v. Lund*, 2018 Palau 10.

¹⁵⁹ 21 PNC § 302.

¹⁶⁰ *Kumangai v. Decherong*, 13 ROP 275 (Tr. Div. 2006).

¹⁶¹ *Emesiochl v. Maraita*, 20 ROP 118 (C.C.P. 2013); *Yano v. Yano*, 20 ROP 190 (2013).

¹⁶² 21 PNC § 335.

¹⁶³ *Yano v. Yano*, 20 ROP 190 (2013).

¹⁶⁴ *Yano v. Yano*, 20 ROP 190 (2013).

¹⁶⁵ 21 PNC § 302.

The court has held that the division of property must be equitable, but need not necessarily be equal.¹⁶⁶ A distinction is drawn between marital property and separate property, with only marital property to be distributed equitably. Under the equitable distribution system, the marriage is viewed as a partnership with both spouses contributing to the marital estate in the manner which they have chosen.¹⁶⁷

Our consultations indicate that the settling of divorce issues is increasingly occurring via the court order rather than through custom.

Family Relations, Marriage and Divorce Summary:

International gender equality principle	Source	Current legal protections in Palau
Equal rights in legal capacity to conclude contracts and administer property and to be treated equally by court procedures.	CEDAW, art. 15(2).	Adults have equal rights in legal capacity (21 PNC §105, Constitution, art. IV).
Equal rights to enter into marriage.	CEDAW, art. 16(1)(a); ICCPR art .23; CESCR art. 10.	Rights to enter marriage have minimum age restrictions with gender differences (21 PNC §§201, 204). See also discussion at 4.10 below regarding the restriction on same-sex marriage.
Equal rights to freely choose a spouse.	CEDAW, art. 16(1)(b); ICCPR art. 23; CESCR art. 10.	Not a specifically protected right - there is no crime of forced marriage.
Equal rights within marriage and at its dissolution.	CEDAW, art. 16(1)(c); ICCPR art. 23.	Customary principles have gender differences with regards to divorce. Grounds for divorce in civil/formal marriages include one gender discriminatory provision, i.e. divorce may be granted where the husband fails to provide for his wife (21 PNC § 331).
The same rights and responsibilities as parents, irrespective of their marital status, in matters relating to their children; in all cases the interests of the children shall be paramount.	CEDAW, art. 16(1)(d); CEDAW, art. 16(1)(f).	The law does not discriminate between parents, and case law principles of child custody are based on principles of gender equality and best interests of the child.
The same rights to decide freely and responsibly on the number and spacing of their children and to have access to the information, education and means to enable them to exercise these rights.	CEDAW, art. 16(1)(e).	This is not explicitly provided in the law, although there are no reports of this being a specific issue in Palau.

¹⁶⁶ *Yano v. Yano*, 20 ROP 190 (2013).

¹⁶⁷ *Yano v. Yano*, 20 ROP 190 (2013).

The betrothal and the marriage of a child shall have no legal effect, and all necessary action, including legislation, shall be taken to specify a minimum age for marriage and to make the registration of marriages in an official registry compulsory.	CEDAW, art. 16(2).	No minimum age is specified for marriages between Palauan citizens (21 PNC § 204). Registration of customary marriage is not compulsory. No explicit provision as to legal effect of child marriage.
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4.9. Property and Inheritance

As noted above, the Constitution of Palau provides for an exception to the principle of equality under the law in relation to intestate succession,¹⁶⁸ thereby permitting the law to contain gender unequal provisions and this does flow through into legislation and acknowledgement of customary law.

Land ownership in Palau takes the following three forms:

- a) ‘Public Lands’ are those lands held and maintained by the government;¹⁶⁹
- b) ‘Lands held in fee simple’ is privately held land that is free from any customary obligations¹⁷⁰ and is governed by statute and case law;
- c) ‘Clan Lands’ means lands claimed collectively by clans where ownership and use rights are regulated by customary principles.¹⁷¹

(i) Lands Held in Fee Simple and Personal Property Disposed by a Will

Lands held in fee simple and personal property may be disposed of or alienated during the lifetime of its owner without restriction. Adults aged 18 years and over may make a will to determine the distribution of their privately held property (i.e. land held in fee simple and other personal property) upon their death.¹⁷²

Upon the death of an owner of land held in fee simple who leaves a valid will, the terms of that will shall prevail. In this circumstance, the means by which the owner acquired that land in the first place does not matter, i.e. it does not matter whether it was purchased for value, inherited or gifted.¹⁷³

Upon the death of an owner of land held in fee simple, but where that land was not acquired through a bone fide purchase for value (i.e. where it was inherited or gifted), and there is no valid will (intestate), then the disposition of that land shall revert to determination by custom.¹⁷⁴

¹⁶⁸ Constitution, art. IV § 5.

¹⁶⁹ 35 PNC § 101.

¹⁷⁰ 39 PNC § 403.

¹⁷¹ See *Robert v. Ngirngemeusch*, 2023 Palau 5, explaining the fundamental difference between lands held in fee simple and clan lands.

¹⁷² 25 PNC § 102.

¹⁷³ *Ysaol v. Eriu Family*, 9 ROP 146 (2002).

¹⁷⁴ *Bandarii v. Ngerusebek*, 11 ROP 83 (2004) per CJ Ngiraklsong; *Wertz v. Titiml, Ernest, & Taima*, 2022 Palau 26.

Upon the death of its owner, land held in fee simple where the owner acquired it as a bona fide purchaser for value, in the absence of a will (intestate) or other disposition, by law shall be inherited by the owner's oldest legitimate living male child of sound mind, natural or adopted, or if male heirs are lacking the oldest legitimate living female child of sound mind, natural or adopted, of the marriage during which such lands were acquired.¹⁷⁵ Here, then, we see a clearly gender discriminatory provision that favors an eldest male child over a female, and which also does not contemplate shared or divided land ownership in these circumstances. Custom plays no role here, and indeed this gender discriminatory provision appears to have its basis in US Trust Territory legal history rather than having any correlation with Palauan custom.

If the owner of land held in fee simple which was acquired as a bona fide purchaser for value has no children and does not leave a will, then the land in question shall be disposed of in accordance with the desires of the immediate maternal or paternal lineage to whom the deceased was related by birth or adoption and which was actively and primarily responsible for the deceased prior to his death.¹⁷⁶ Regarding how the relevant lineage might make this decision, in the case of *Bandarii v. Ngerusebek*¹⁷⁷ the majority decision held that no limit is placed on the lineage in disposing of the land including conferring it upon the lineage itself. However, Chief Justice Ngiraklsong in a concurring judgment held that it can be inferred that law-makers intended that customary law would come back into effect in such circumstances. Chief Justice Ngiraklsong's concurring judgment has since been followed in the more recent case of *Marsil v. Telungalk ra Iterkerkill*¹⁷⁸ meaning that customary law applies.

(ii) *Clan Lands, Personal Property and Customary Principles*

For the general management of clan lands, it is well-established under customary law that a clan (male) chief has the power to administer the clan's lands, but he needs the agreement of all the senior strong members¹⁷⁹ (both male and female) of the clan to transfer or alienate the land, including by lease to a non-clan member.¹⁸⁰ Clan funds may be managed by the female titleholder, but she also needs to consult, and reach consensus, with the senior strong members of the clan in deciding how the funds may be used.¹⁸¹

A will cannot affect the distribution of clan lands. For clan lands, or lands held in fee simple where customary law otherwise applies (see discussion above), or personal property not subject to a will, when a holder or occupant of that property dies, then Palauan custom requires the holding of an '*cheldech duch*'¹⁸² – a meeting of senior members (male and female) of the family, lineage or clan to decide the disposition of the deceased's property. In cases of a married male deceased, the

¹⁷⁵ 25 PNC § 301(a).

¹⁷⁶ 25 PNC § 301(b).

¹⁷⁷ *Bandarii v. Ngerusebek*, 11 ROP 83 (2004).

¹⁷⁸ *Marsil v. Telungalk ra Iterkerkill*, 15 ROP 33 (2008).

¹⁷⁹ *South Pacific Capital Investment v. Gabriel et al.*, 2023 Palau 9; *Obichang v. Etpison*, 2021 Palau 26; *Isechal v. Umerang Clan*, 18 ROP 136 (2011).

¹⁸⁰ *Andres v. Aimeliik State Public Lands Authority*, 2020 Palau 18; *Demei v. Sugiyama*, 2021 Palau 2; *Isechal v. Umerang Clan*, 18 ROP 136 (2011).

¹⁸¹ *Terekieu Clan v. Ngirmeriil*, 2019 Palau 37.

¹⁸² Or sometimes also spelled as '*eldech duch*'.

decisions will include provision for his widow and children. The decisions of the *cheldecheduch* will be binding. The *cheldecheduch* can also take place prior to death, and the decedent’s wishes expressed there will be binding.¹⁸³

At the *cheldecheduch*, decisions may be made based on customary principles, such as: when a married woman is living on her husband’s clan land, on the death of the husband, she should return to her matrilineal clan to live, and a surviving spouse must follow the known final wishes of their deceased spouse.¹⁸⁴ However, such customary principles are often the subject of disagreement among experts, may contain considerable flexibility based on circumstances and may also change over time.

Property and Inheritance Summary:

International gender equality principle	Source	Current legal protection in Palau
Equal rights to hold and administer property	CEDAW, art. 15(2).	Men and women have equal rights to hold private land and other personal property, however, usage and management rights for clan lands are determined by the matrilineal clan lineage based on principles of custom which have gender unequal aspects.
Equal rights to inherit land and non-land assets	Found in general CEDAW principles of non-discrimination: arts. 2(c), 2(f), 15(1), 16(1)(h).	Lands held in fee simple are subject to gender unequal intestate succession rules (25 PNC § 301(a)). Inheritance of lands and other property subject to custom will be determined by matrilineal clan lineage, with some gender unequal principles involved.

4.10. LGBTQI+ Rights

In 2011, Palau signed the UN *Joint Statement on Ending Acts of Violence and Related Human Rights Violations Based on Sexual Orientation and Gender Identity*, condemning violence and discrimination against LGBTQI+ people. As noted in Part 1.3 above, the signing of such international instruments serves as an indication of policy direction and potentially for judicial interpretation, but is not itself legally binding under Palauan law.

There are no laws restricting the discussion or promotion of LGBTQI+ topics in the media, and no prohibitions on LGBTQI+ persons taking part in public or civic life.

¹⁸³ *Wertz v. Titiml, Ernest, & Taima*, 2022 Palau 26 (2022); *Ngiraingas v. Tellei*, 20 ROP 90 (2013).

¹⁸⁴ *Ngiraingas v. Tellei*, 20 ROP 90 (2013).

Palau has no constitutional or statutory principles to protect against discrimination on the basis of sexual orientation, transgender identity or intersex status in any domain of life including in employment.

Consensual same-sex sexual activities are no longer prohibited in Palau since a legislative change to the Penal Code was enacted in 2012,¹⁸⁵ which removed the criminal offense of sodomy.¹⁸⁶ This occurred following recommendations made by the UN Universal Periodic Review made in October 2011.

Same-sex marriage is not permitted in Palau. The Constitution was amended in 2008 to restrict marriages conducted in Palau as between a man and a woman only (Constitution, art. IV §13) with agreement from 83.55% of the population. This constitutional provision is a key obstacle to the legal recognition of LGBTQI+ identities in Palau. Note that the law does not explicitly provide for or prohibit the registration or recognition of same-sex marriages conducted outside of Palau, but at least one attempt to register an overseas same-sex marriage was denied in around 2014. This administrative refusal was not pursued in court.

As noted above, this prohibition on same-sex marriage serves to exclude same-sex couples from accessing surviving spouse insurance social security benefits (see discussion above in Part 4.4).

Palau does not provide any specific administrative or legal procedures allowing transgender persons to have their identified gender recognised in official documents. The ability to do this does not appear to have been tested.

The US Department of State has reported that LGBTQI+ individuals experience discrimination and stigma when accessing the public health care system, including those providing treatment for HIV and other communicable diseases.¹⁸⁷ Private clinics, often run by foreigners, were preferred for being less judgmental when treating patients with LGBTQI+ identities. Members of LAIIB (Living All-Inclusive in Belau), the one LGBTQI+ group in Palau, also reported to us that occasional issues arise in relation to some same-sex couples' ability to make medical decisions for each other, and also the public health system's refusal to accept blood donations from men who have sex with men.

*LGBTQI+ Summary:*¹⁸⁸

International gender equality principle	Source	Current legal protection in Palau
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¹⁸⁵ Amended by RPPL 8-51 (*Family Protection Act*) (2012); and renumbered by RPPL 9-21 (*New Penal Code*) (2014).

¹⁸⁶ Sodomy was previously banned under 17 PNC § 2803 (and prior to this under the Trust Territory Code 1966 § 409 and Trust Territory Code 1970 § 1303) and was punishable by up to 10 years' imprisonment.

¹⁸⁷ US Department of State, *Palau 2022 Human Rights Report*.

¹⁸⁸ Although there is no international human rights treaty specifically on LGBTQI+ rights, some general principles can be distilled from United Nations Human Rights Council and General Assembly resolutions and other materials: <https://www.ohchr.org/en/sexual-orientation-and-gender-identity/about-lgbti-people-and-human-rights>.

Sexual orientation and gender identity are included among prohibited grounds of discrimination.	UN Human Rights Council Resolution A/HRC/RES/32/2.	There are no protections against discrimination on grounds of sexuality, transgender or intersex identities.
Individuals are protected from homophobic and transphobic violence, torture and cruel, inhuman and degrading treatment.	UN Human Rights Council Resolution A/HRC/RES/32/2.	In general, violence, torture and inhuman and degrading treatment are prohibited against all persons (Constitution, art. IV § 10), but there are no specifically protective provisions on homophobic or transphobic violence.
Hate crime laws discourage violence against individuals based on sexual orientation.	OHCHR (https://www.ohchr.org/en/sexual-orientation-and-gender-identity/about-lgbti-people-and-human-rights)	There is no specific law on hate crimes, but criminal law protects against violence against the person in general.
Decriminalize homosexuality including private sexual conduct between consenting adults.	OHCHR (https://www.ohchr.org/en/sexual-orientation-and-gender-identity/about-lgbti-people-and-human-rights)	Yes, homosexuality has been decriminalized.
Safeguard freedom of expression, association and peaceful assembly for all persons who identify as LGBTQI+ people.	OHCHR (https://www.ohchr.org/en/sexual-orientation-and-gender-identity/about-lgbti-people-and-human-rights)	The right to freedom of expression and association is generally protected (Constitution, art. IV), but there is no explicit protection for LGBTQI+ persons.
Equal rights to enter into marriage for persons who identify as LGBTQI+.	OHCHR (https://www.ohchr.org/en/sexual-orientation-and-gender-identity/about-lgbti-people-and-human-rights)	No. Same-sex marriage is precluded by the Constitution (art. IV § 13).
Transgender and intersex individuals are able to obtain documents that match their preferred identity.	OHCHR (https://www.ohchr.org/en/sexual-orientation-and-gender-identity/about-lgbti-people-and-human-rights)	There is no specific legal provision to either enable or prohibit this.

4.11. Gender-Based Violence (GBV) and Human Trafficking

The most recent comprehensive survey of gender-based violence was conducted in 2014 by the UNFPA,¹⁸⁹ and found that one quarter of women in Palau had experienced physical and/or sexual violence by a partner in their lifetime. A more recent but less comprehensive survey conducted by BANGO (Belau Association of Non-Government Organizations), found that 73% of 1,172 survey respondents had either themselves experienced family or gender-based violence or knew somebody who had.¹⁹⁰ Members of BANGO reported that GBV in Palau is often linked to the monetary stresses associated with cultural obligations such as funerals, as well as to drugs and alcohol use.

Sexual and other gender-based violence offenses represent an area of criminal law which has developed significantly over time in Palau, as the approach has been modernized. The current Palau Penal Code (Title 17) criminalizes a number of gender-based violence acts, and some additional crimes were also created via the *Family Protection Act 2012* (codified in Title 21).

Criminal offenses are generally divided into Class A felonies (carrying a maximum 25-year prison sentence), Class B felonies (maximum 10-year prison sentence), Class C felonies (maximum 5-year prison sentence) and misdemeanors (max 1-year sentence). Some provisions such as those of human trafficking and domestic abuse offenses specify particular penalties.

- Incest

The offense of incest involves knowingly committing an act of sexual penetration with another who is within the degrees of consanguinity or affinity within which marriage is prohibited by law or custom. This is a Class A felony.¹⁹¹

- Illegal Marriage

It is an offense to marry someone who is legally ineligible to be married to the offender. This offense therefore covers bigamy, incestuous marriage and underage marriage. This is a class C felony.¹⁹² Customary marriage would be sufficient to constitute ‘marrying’ within the meaning of this provision.¹⁹³

- Sexual Assault

Palauan law provides for a range of sexual assault offenses. Sexual assault in the first degree means knowingly subjecting a person to sexual penetration by strong compulsion. This offense also includes knowingly engaging in sexual penetration with minor younger than 15, or below 17 if less than 5 years older (i.e. statutory rape), or sexual penetration of a person of mental or physical incapacity. This is a class A felony.¹⁹⁴ Sexual assault in the second degree involves knowingly

¹⁸⁹ UNFPA, *Belau Family Health and Safety Study: National Research Project on Violence Against Women in Palau* (October 2014).

¹⁹⁰ Belau Association of Non-Governmental Organizations (BANGO), ‘F&GBV Survey Results and Quarter 2 Social Marketing and IEC Activities’ (2023).

¹⁹¹ 17 PNC § 1602.

¹⁹² 17 PNC § 1610.

¹⁹³ *Umüich v. Trust Territory* 3 TTR 231 (1967).

¹⁹⁴ 17 PNC § 1603.

subjects a person to sexual penetration by compulsion; includes sexual assault perpetrated while in custody. This is a class B felony.¹⁹⁵ Sexual assault in the third degree includes recklessly subjecting a person to sexual penetration or have sexual contact with someone less than 15 years. This is a class C felony.¹⁹⁶ Sexual assault in the fourth degree criminalizes knowingly subjecting another person to sexual contact by compulsion or causing another person to have sexual contact with the actor by compulsion, knowingly exposes genitals; or knowingly trespasses on property for sexual gratification. This is a misdemeanor.¹⁹⁷

Note that the *Family Protection Act 2012*¹⁹⁸ removed the previous ‘marital exemption’¹⁹⁹ from the Penal Code thereby removing the assumption that sexual consent within marriage is automatic in relation to sexual assault in the first and second degrees. However, there is still a marriage exemption for the offense of sexual assault in the third degree involving knowingly engaging with a minor aged between 15 and 17 years.²⁰⁰

- Sexual Harassment

The offense of sexual harassment, meaning unwelcome sexual advances or requests, is a misdemeanor.²⁰¹ Note that there is no specific legal prohibition on sexual harassment in the workplace, but this broad criminal provision should still cover workplace contexts.²⁰² The law on sexual harassment is also worded broadly enough that it might be interpreted to stretch to online sexual harassment, although this does not appear to have been applied or tested in court.

- Indecent Exposure

The offense of indecent exposure, criminalizes intentionally exposing a person’s genitals to a person to whom the person is not married under circumstances in which the actor’s conduct is likely to cause affront, is a misdemeanor.²⁰³ This offense, therefore, also retains a marital exemption.

There is also a misdemeanor of open lewdness criminalizing any lewd act likely to be observed by others who would be affronted or alarmed.²⁰⁴

- Stalking

¹⁹⁵ 17 PNC § 1604.

¹⁹⁶ 17 PNC § 1605.

¹⁹⁷ 17 PNC § 1606.

¹⁹⁸ RPPL 8-51.

¹⁹⁹ Previously codified as 17 PNC § 2802 (11 TTC § 1302): ‘Every person who shall unlawfully have sexual intercourse with a female, not his wife, by force and against her will, shall be guilty of rape, and upon conviction thereof shall be imprisoned for a period of not more than 25 years’.

²⁰⁰ 17 PNC § 1605 (a)(3)(B).

²⁰¹ 17 PNC § 1608.

²⁰² The ADB identified this gap as being problematic: Asian Development Bank (ADB), *Private Sector Assessment for Palau: Policies for Sustainable Growth Revisited* (Asian Development Bank, 2017), p. 43.

²⁰³ 17 PNC § 1609.

²⁰⁴ 17 PNC § 4907.

The offense of harassment by stalking will be perpetrated: if, with intent to harass, annoy, or alarm another person, or in reckless disregard of the risk thereof, that person engages in a course of conduct involving pursuit, surveillance, or non consensual contact upon the other person on more than one occasion without legitimate purpose.²⁰⁵ This is a misdemeanor and carries a maximum penalty of one year imprisonment and/or a fine of \$1000. A second offense has a minimum jail sentence of 30 days, and a third or subsequent offense has a maximum penalty of five years imprisonment and/or a fine of \$10,000.

By definition, this offense has no requirement for the stalking to have been sexually motivated. The offense might be interpreted to also apply in an online-only context although this does not yet appear to have been tested by the courts.

- Pornography

Pornography offenses are provided for in Palau’s criminal code. Displaying indecent matter in a public place is a misdemeanor offense.²⁰⁶ The act of displaying indecent matter is sufficient to presume that the person did so knowingly or recklessly.²⁰⁷ This provision is worded such to emphasize physical public places and so probably does not cover display of indecent matter on the internet or on personal digital devices.

Promoting pornography, which includes the dissemination, presentation or performance of pornographic material for monetary consideration is also a misdemeanor offense.²⁰⁸ The definition of this offense of promoting pornography as requiring ‘monetary consideration’ would probably mean that it does not cover situations of ‘revenge pornography’ or the spreading of pornography for any other reason.

For discussion of pornography offenses involving children, see further at Part 4.12 below).

- Domestic Abuse

Since 2012 and the enactment of the *Family Protection Act* (included in Title 21 Palau National Code), Palau has had a separate regime for handling domestic abuse.²⁰⁹ This *Act* includes both the crime of domestic abuse and provision for victims to submit civil petitions to the court for protective orders.

Under the *Family Protection Act*, it is a crime to physically abuse a family or household member.²¹⁰ The definition of family or household member covers spouses, former spouses, persons in a dating relationship, persons who have a child in common, parents, children, persons related by consanguinity, and persons jointly residing or formerly residing in the same dwelling unit. This is a misdemeanor offense that carries specific penalties. For the first offense the person shall serve a

²⁰⁵ 21 PNC § 809.

²⁰⁶ 17 PNC § 4902.

²⁰⁷ 17 PNC § 4903.

²⁰⁸ 17 PNC § 4904.

²⁰⁹ A review of this system was undertaken in 2017: Australian Aid and Pacific Women Shaping Pacific Development, ‘Review of the Implementation of the Family Protection Act 2012’ (December 2017).

²¹⁰ 21 PNC § 808.

minimum jail sentence of forty-eight hours; and for a second offense that occurs within one year of the first conviction, the person shall serve a minimum jail sentence of thirty days. The court may also require the offender to undergo domestic violence intervention programs. For a third or any subsequent offense that occurs within two (2) years of a second or subsequent, conviction, the offense shall be a felony and upon conviction thereof shall be imprisoned for a period of not more than five (5) years, or fined up to \$10,000, or both.²¹¹

Note that the definition of the offense of domestic abuse requires ‘physical abuse’ to have occurred, although does not necessarily require lasting injury. However, under the law psychological abuse or ‘coercive control’ alone is not a crime.

In 2021, a total of 53 criminal actions were filed under the *Family Protection Act*, compared to 66 actions in 2020.²¹² Although not specifically stated, this data may be assumed to be counting domestic abuse offenses (rather than the broader set of other offenses covered by the *Family Protection Act*).²¹³

As noted, the *Family Protection Act* also permits victims of domestic abuse to apply to the court for Temporary Restraining Orders (TROs) and longer-term Protective Orders (POs) and provides for criminal penalties for breaches of those orders.²¹⁴ Protective orders are available where psychological abuse has occurred and therefore they have broader application than the criminal offense of domestic abuse. This system of protective orders is well-used. In 2021, a total of 69 cases were filed, 53 of which were filed by women, 14 by men and the remaining two cases were filed jointly.²¹⁵

A survey of 60 family law and Family Protection Act court users conducted in 2019-2020 found that around 40% of users had experienced problems approaching the police or the courts, but after they did approach the police or the courts that 96% of users got all or part of the results that they wanted.²¹⁶

- Human Trafficking

Palau’s laws on human trafficking were significantly strengthened through the *Anti-Human Trafficking Act of 2022*,²¹⁷ mostly amending Title 17 of the Palau National Code. The law was passed in response to the US Department of State downgrading Palau to the ‘Tier 2 Watchlist’ in

²¹¹ 21 PNC § 808.

²¹² Palau Supreme Court, *Access to Justice as Covid-19 Challenges Continue: 2021 Court Annual Report*, p. 25.

²¹³ Personal communication from a court clerk.

²¹⁴ 21 PNC §§ 821–834.

²¹⁵ Palau Supreme Court, *Access to Justice as Covid-19 Challenges Continue: 2021 Court Annual Report*, p. 35.

²¹⁶ Cate Sumner and Jazmine Elmolla, ‘2019–2020 Family Law and Family Protection Cases in Palau: A Review of the 2019–2020 Family Law and Family Protection Act Survey’ (Pacific Justice Sector Program, May 2023).

²¹⁷ RPPL 11-28.

its annual Trafficking in Persons Report.²¹⁸ These amendments and other government actions were accounted for in the 2023 Report, and the upgrading of Palau’s ranking to ‘Tier 2’ in 2023.²¹⁹

The amendments added to the existing offenses and also stipulated greatly increased maximum and minimum penalties. The following forms of trafficking and related activities are now criminalized:

- Human smuggling (fined not more than US\$12,500 and imprisoned not less than one (1) year or more than ten (10) years).²²⁰
- Aggravated human smuggling (fined not more than US\$25,000 and imprisoned not less than five (5) years or more than fifteen (15) years).²²¹
- Human trafficking (fined not more than US\$125,000 and imprisoned not less than three (3) years or more than twenty-five (25) years).²²²
- Aggravated human trafficking (fined not more than US\$175,000 and imprisoned not less than five (5) years or more than thirty (30) years).²²³
- Trafficking in children (fined not more than US\$250,000 and imprisoned for not less than five (5) years or more than twenty-five (25) years).²²⁴
- Aggravated trafficking in children (fined not more than US\$375,000 and imprisoned for not less than ten (10) years or more than fifty (50) years without the possibility of parole).²²⁵
- Exploiting a trafficked person (fined not more than US\$25,000 and imprisoned for not less than one (1) year or more than ten (10) years).²²⁶
- Exploiting a trafficked child (fined not more than US\$50,000 and imprisoned for not less than two (2) years or more than ten (10) years).²²⁷
- Labor trafficking in the first degree (maximum US \$50,000 in fines and/or 25 years of imprisonment).²²⁸
- Labor trafficking in the second degree (maximum US \$25,000 in fines and/or 10 years of imprisonment).²²⁹
- Non-payment of wages (US\$2,000 to 10,000 in fines and up to).²³⁰
- Travel document fraud (fined not more than US\$12,500 and imprisoned not less than one (1) year or more than ten (10) years).²³¹

²¹⁸ US Department of State, *2022 Trafficking in Persons Report: Palau*, available at: <https://www.state.gov/reports/2022-trafficking-in-persons-report/palau/>.

²¹⁹ US Department of State, *2023 Trafficking in Persons Report: Palau*, available at: <https://www.state.gov/reports/2023-trafficking-in-persons-report/palau/>.

²²⁰ 17 PNC § 2103.

²²¹ 17 PNC § 2104.

²²² 17 PNC § 2106.

²²³ 17 PNC § 2107.

²²⁴ 17 PNC § 2108.

²²⁵ 17 PNC § 2109.

²²⁶ 17 PNC § 2110.

²²⁷ 17 PNC § 2111.

²²⁸ 17 PNC § 2002.

²²⁹ 17 PNC § 2003.

²³⁰ 17 PNC § 2006.

²³¹ 17 PNC § 2105.

- For all the criminal offenses listed above which specify a maximum fine, minimum fines shall be one-third (1/3) of the maximum.²³²

*Gender-Based Violence Summary:*²³³

International gender equality principle	Source	Current legal protections in Palau
Victims are provided with adequate civil remedies against the perpetrator.	Istanbul Convention, art. 29.	Victims of domestic abuse have access to civil protective orders (21 PNC §§ 821–834).
Civil remedies are provided against State authorities that have failed in their duty to take the necessary preventive or protective measures within the scope of their powers for GBV.	Istanbul Convention, art. 29.	State civil remedies are not available for failure of the State to prevent GBV.
Victims have the right to claim compensation from perpetrators for GBV offenses.	Istanbul Convention, art. 30.	In general, the court may order a defendant to pay restitution to victims of crime (17 PNC § 657). Victims may also pursue civil claims for injury, although this rarely occurs in Palau.
Victims are provided with adequate State compensation for serious bodily injury or impairment of health, to the extent that the damage is not covered by other sources such as the perpetrator, insurance or State-funded health and social provisions.	Istanbul Convention, art. 30.	There is no State compensation available, but victims of crime may access emergency health and social services.
Incidents of GBV are taken into account when determining custody and visitation rights of children.	Istanbul Convention, art. 31.	No specific legal provision on this, but the tests for best interests of the child established in case law (see Part 4.8 above) should require courts to take GBV into account in custody decisions.
The exercise of any visitation or custody rights does not jeopardize the rights and safety of the victim or children.	Istanbul Convention, art. 31.	Courts have broad discretion to make custody orders, but should take account of the best interests of the child (21 PNC § 302; see above Part 4.8).
Marriages concluded under force may be voidable, annulled or dissolved without undue	Istanbul Convention, art. 32.	There is no specific provision for this in the law.

²³² 17 PNC § 2126.

²³³ We recognize here that CEDAW (and the CEDAW Committee Recommendations) provides general principles of anti-discrimination which may apply to situations of gender-based violence. However, the most comprehensive set of principles on substantive and procedural responses to GBV are found in the Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence (CETS no. 210) (the ‘Istanbul Convention’) and therefore we use this as our source of international principles.

financial or administrative burden placed on the victim.		
Intentional conduct of seriously impairing a person’s psychological integrity through coercion or threats is criminalized.	Istanbul Convention, art. 33.	Psychological or coercive control (without physical abuse) is not criminalized, although civil protective orders may be obtained where this is occurring.
The intentional conduct of repeatedly engaging in threatening conduct directed at another person, causing her or him to fear for her or his safety, is criminalized.	Istanbul Convention, art. 34.	Verbal threats to injure another person are generally criminalized (17 PNC §§ 1408–1410). Such conduct may also fall under the offense of stalking (21 PNC § 809).
The intentional conduct of committing acts of physical violence against another person is criminalized.	Istanbul Convention, art. 35.	Yes, physical abuse and assault against another person is criminalized.
Non-consensual sexual violence is criminalised, with no exceptions for current or former marriage partners.	Istanbul Convention, art. 36.	Yes, sexual assault is criminalized, and the marriage exception has been removed for sexual assault in first and second degrees.
The intentional conduct of forcing an adult or a child to enter into a marriage is criminalized.	Istanbul Convention, art. 37.	No, there is no offense of forced marriage, although it is recognized as a form of exploitation for the purposes of human trafficking offenses (17 PNC § 2102).
Female genital mutilation is criminalized.	Istanbul Convention, art. 38.	This practice is not specifically prohibited, but would fall under general assault offenses. There is no known practice of this in Palau.
Forced abortion or sterilization is criminalized.	Istanbul Convention, art. 39.	Abortion in general is criminalized, and this offense includes causing another person to miscarry (17 PNC § 1310). Forced sterilization would be an offense under general assault provisions (17 PNC §§ 401–1403).
Any form of unwanted verbal, non-verbal or physical conduct of a sexual nature with the purpose or effect of violating the dignity of a person, in particular when creating an intimidating, hostile, degrading, humiliating or offensive environment, is subject to criminal or other legal sanction.	Istanbul Convention, art. 40.	Yes, sexual harassment and stalking are criminalized (17 PNC § 1608; 21 PNC § 809).
Aiding and abetting of criminal offenses of GBV is also criminalized.	Istanbul Convention, art. 41.	Under general criminal law principles, a person is liable for aiding another person in the commission of an offense (17 PNC § 223).

Ensure that justifications for violence such as 'honor', culture, custom, religion are not defenses for GBV.	Istanbul Convention, art. 42.	Provision is made for dismissing a prosecution if the conduct was 'within a customary license or tolerance, which was not expressly refused by the person whose interest was infringed and that is not inconsistent with the purpose of the law defining the offense' (17 PNC § 236). It does not appear that this provision has ever been used in relation to GBV offenses.
Offenses of GBV apply irrespective of relationship between perpetrator and victim	Istanbul Convention, art. 43.	General offenses apply regardless of the relationship between perpetrator and victim. The law on domestic abuse covers 'family or household member' and defines this broadly (21 PNC § 808).
Offenses of GBV are punishable by effective, proportionate and dissuasive sanctions, taking into account their seriousness.	Istanbul Convention, art. 45.	Yes, the sanctions for GBV are proportionate to the seriousness of the crime compared to other forms of crime in Palau.
Aggravating circumstances taken into account in applying penalties, e.g. presence of child, reoffending, extreme levels of violence, severity of harm to victim.	Istanbul Convention, art. 46.	The presence of a child is specifically accounted for in relation to arrest for domestic abuse (21 PNC § 808), but it is not an explicitly stated factor in sentencing.
No mandatory alternative dispute resolution (ADR) in relation to prosecution of GBV offenses.	Istanbul Convention, art. 48.	There is no mandatory ADR.
Competent authorities are granted the power to order, in situations of immediate danger, a perpetrator of domestic violence to vacate the residence of the victim or person at risk for a sufficient period of time.	Istanbul Convention, art. 52.	Yes. Police may apply 24-hour-stay away-orders or arrest a perpetrator in cases of domestic abuse (21 PNC § 808).
Appropriate restraining or protection orders are available to victims of GBV. Available for immediate protection, issued for specified period, where necessary issued ex parte, available irrespective of other legal proceedings, allowed to be introduced in subsequent proceedings.	Istanbul Convention, art. 53.	Yes. Victims of domestic abuse have access to civil protective orders which are available for immediate and longer-term protection (21 PNC §§ 821–834).
Breaches of restraining or protection orders are subject to effective, proportionate and dissuasive criminal or other legal sanctions.	Istanbul Convention, art. 53.	Yes. Breaches of protection orders for domestic abuse are subject to legal sanctions that increase for first, second and subsequent violations (21 PNC § 833).

Evidence relating to sexual history of the victim and conduct of the victim shall be permitted only where relevant and necessary.	Istanbul Convention, art. 54.	Yes, there is a specific prohibition on use of evidence of the victim's past sexual behavior in criminal cases (Rules of Evidence for the Courts of the Republic of Palau Rule 412).
Criminal proceedings for GBV should not be wholly dependent on a victim's evidence and can proceed even if the victim withdraws their complaint.	Istanbul Convention, art. 55.	Yes, criminal proceedings do not require a victim's complaint. Domestic abuse contains a 'no drop' policy meaning that any customary or traditional reconciliation will not affect criminal charges (21 PNC § 810).
Counselors should be available to victims during criminal proceedings for GBV.	Istanbul Convention, art. 56.	The Victims of Crime Advocate (VOCA) is generally available to assist victims of crime, although counseling services are not specifically provided for.
Prevent and combat trafficking in persons, paying particular attention to women and children	TIP Protocol.	Palau has enacted a suite of anti-human trafficking laws with strong penalties that apply to all victims of trafficking. The Anti-Human Trafficking Unit located within the Bureau of Public Safety is tasked with enforcement of these laws.
Protect and assist the victims of trafficking in persons, with full respect for their human rights, and protect victims, especially women and children, from victimization.	TIP Protocol.	Palau's Anti-Human Trafficking Working Group has adopted a Standard Operating Procedure (SOP) that includes the protection and assistance of victims of trafficking.

4.12. Children's Rights and Gender Issues

There are a range of children's rights issues in Palau that are interrelated with gender in the sense that one group of children (around the world this is often girls) may have heightened vulnerability due to their gender. The following section covers adoption, child labor, child exploitation offenses, child abuse and trafficking in children.

Adoption

Both customary and formal adoption of children among related families is a common practice in Palau. There are mixed views on the impacts of adoption in Palau with concerns about emotional

trauma and heightened risk of abuse, but also acknowledgement that adoption can be a positive process providing children with social protection.²³⁴

For formally recognised adoptions, there are no gender or marital restrictions on who may become an adoptive parent.²³⁵ Courts will grant adoptions when it is in the best interests of the child.²³⁶ Children aged over 12 years at the time of adoption need to consent to the adoption.²³⁷

Adoptions undertaken in accordance with custom are also recognized by law.²³⁸ Customary adoptive relationships have a range of traditional designations based on: (i) how the person came to be adopted; (ii) the blood relationships between the adopted person and their adoptive parent(s); (iii) gender of an adopted child (e.g. a female child will have stronger status and inheritance rights within her adopted clan); and (iv) the contribution of the adopted person to their adopted family.²³⁹ According to custom, maternal relatives have the primary responsibility for caring for children in need. However, problems can arise for customarily adopted children in obtaining official documentation (such as passports, visas and access to state subsidies (see discussion at 4.7 above)) if their adoption was not previously formalized.

Also, as noted at Part 4.1(i) above, Palauan parents cannot pass Palauan citizenship to foreign adopted children.

Child Labor

As the law does not set a minimum age for Palauan citizens (or for the children of foreigners in Palau) to be employed (see also Part 4.3 above), there is a gap in legal protections on this issue. However, we also note that the legal provision for compulsory schooling until age 17 years (see Part 4.2 above) at least partially covers this gap.

As noted in Part 1.3 above, Palau has ratified the ILO Convention on the Worst Forms of Child Labor, and protections against slavery, child prostitution, and use of children in illicit activities are present in Palauan law. A general, explicit, prohibition on ‘work which, by its nature or the circumstances in which it is carried out, is likely to harm the health, safety or morals of children’ is still lacking.

Child Exploitation Offenses

While the sexual offenses outlined at Part 4.11 above would also apply where there is a child victim, additional offenses involving children are also set out in the law and generally carry stronger criminal penalties.

²³⁴ Palau Ministry of Health and Human Services with UNICEF Pacific, ‘Palau Child Protection Systems Assessment and Mapping Project: Findings and Recommendations’ (2022), p. 24.

²³⁵ 21 PNC § 402.

²³⁶ 21 PNC § 406.

²³⁷ 21 PNC § 404.

²³⁸ 21 PNC § 103.

²³⁹ Palau Ministry of Health and Human Services with UNICEF Pacific, ‘Palau Child Protection Systems Assessment and Mapping Project: Findings and Recommendations’ (2022), p. 25.

The offense of continuous sexual assault of a minor under the age of fifteen years is a Class A felony.²⁴⁰

The law also stipulates child pornography protections. Promoting child exploitation in the first degree is defined as producing or participating in the production of child pornography. This is a Class A felony.²⁴¹ Promoting child exploitation in the second degree is defined as disseminating or reproducing child pornography and is classified as a Class B felony.²⁴² Possession of child pornography material constitutes the offense of promoting child exploitation in the third degree and this is a Class C felony.²⁴³ It is also a Class C felony to promote or disseminate pornographic material to minors.²⁴⁴

The offenses of electronic enticement of a child in the first and second degrees are defined as using a computer or any other device to communicate with a child under 18 with the intent of promoting or facilitating a felony (the degree depends on the felony in question) and traveling to an agreed meeting place with the child.²⁴⁵

Palauan law provides only limited protection of children online as there is no specific legislation on online child exploitation or cyberbullying.²⁴⁶

Child Abuse

The sources of legal provisions on child abuse are found in both the *Child Abuse Act* and the *Family Protection Act* (both contained within Title 21).

Mandatory reporters (teachers, medical professionals, parents) who know or should have known of abuse, sexual abuse or neglect of a child must report the matter to the police within 48 hours.²⁴⁷ Failure to report is a misdemeanor offense punishable by up to 1 year imprisonment and/or a fine of \$1000.²⁴⁸

Child abuse or neglect of a child under age 16 is a felony offense carrying a penalty of maximum five years prison and/or \$1000 fine.²⁴⁹ Sexual abuse of a child aged under the age of 18 is felony offense carrying a penalty of up to 25 years prison and/or up to \$50,000 fine (50% of which can be awarded to the victim or their guardian).²⁵⁰

As noted above in Part 4.11 on domestic abuse, the physical abuse of a family or household member is an offense, with graduated penalties depending on whether it is a first, second or third

²⁴⁰ 17 PNC § 1607.

²⁴¹ 17 PNC § 1802.

²⁴² 17 PNC § 1803.

²⁴³ 17 PNC § 1804.

²⁴⁴ 17 PNC § 4905.

²⁴⁵ 17 PNC § 1806.

²⁴⁶ UNICEF Pacific Multi-Country Office, *Child Online Protection in Palau* (2020), p. 34.

²⁴⁷ 21 PNC § 603.

²⁴⁸ 21 PNC § 604.

²⁴⁹ 21 PNC § 608.

²⁵⁰ 21 PNC § 608.

offense.²⁵¹ There are also the offenses of endangering the welfare of a minor in the first degree and second degree. In the first degree, this is defined as where a person with custody of a child intentionally inflicts serious bodily harm or inflicts or permits a controlled substance to be ingested, and carries a maximum penalty up to 5 years prison and/or up to \$10,000 fine.²⁵² Endangering the welfare of a minor in the second degree is defined as a person with custody of a child recklessly allowing another person to inflict bodily harm on the child or cause them to ingest a harmful substance, or where the person with custody endangers the minors physical or mental welfare by violating or interfering with any legal duty of care or protection owed to the minor. This carries a maximum penalty of one year imprisonment and/or a fine of \$1000.

There are also offenses of custodial interference in the first and second degree (e.g. where one parent interferes with the legal child custody rights of another),²⁵³ as well as for violations of civil protective orders (including those involving children).²⁵⁴

There are no clear provisions under the Palauan law for a child to be forcibly removed by the government from his/her parents or family although a person (including a parent) accused of child abuse, sexual abuse or neglect will be ordered to have no contact with that child until the case is resolved by the court. A person, including a parent, convicted of the above-mentioned child abuse or neglect offenses, can potentially be sentenced to a prison term which would have the effect of forcibly removing the parent from the child. Other customary protection principles such as reliance on a maternal uncle for protection or customary adoption may also come into play.²⁵⁵

Trafficking in Children

In addition to the general human trafficking offenses outlined at Part 4.11 above, additional there is provision for specific offenses involving child victims, as follows:

- The offense of trafficking in children carries penalties of a fine of not more than US\$250,000 and imprisonment for not less than five (5) years or more than twenty-five (25) years.²⁵⁶
- The offense of aggravated trafficking in children carries a fine of not more than US\$375,000 and imprisoned for not less than ten (10) years or more than fifty (50) years without the possibility of parole.²⁵⁷
- Exploiting a trafficked child (fined not more than US\$50,000 and imprisoned for not less than two (2) years or more than ten (10) years).²⁵⁸

Juvenile Offenders

²⁵¹ 21 PNC § 808.

²⁵² 21 PNC § 803.

²⁵³ 21 PNC §§ 806, 807.

²⁵⁴ 21 PNC § 833.

²⁵⁵ Palau Ministry of Health and Human Services with UNICEF Pacific, 'Palau Child Protection Systems Assessment and Mapping Project: Findings and Recommendations' (2022), pp. 24–25, 27.

²⁵⁶ 17 PNC § 2108.

²⁵⁷ 17 PNC § 2109.

²⁵⁸ 17 PNC § 2111.

The minimum age of criminal responsibility in Palau is not currently specified in the law.²⁵⁹ Palauan courts may employ flexible procedures when conducting criminal procedures involving juvenile defendants (aged under 18 years).²⁶⁰ However, an offender aged above 16 years may be treated as an adult in criminal procedures if their physical and mental maturity so justifies.²⁶¹ Courts can order confinement of convicted juveniles in alternative locations if it is in the juvenile’s best interest.²⁶²

The Ministry of Justice, through its Division of Juvenile Justice, has implemented an alternative sentencing program for juveniles charged with non-violent offenses. This program includes restorative justice approaches including modified detention, restitution to victims, community service, and cultural education.²⁶³ The Division of Juvenile Justice aims to employ both male and female officers and counselors, states that it will not discriminate on the basis of gender, sexual orientation or other identity factors, although its rules on temporary shelter for juveniles do not explicitly recognize potentially different gender needs.²⁶⁴

Parents may also be held liable for a fine if their child is convicted of an offense and the court thinks that the parents had contributed to the delinquency by failure to exert ‘reasonable parental control.’²⁶⁵

Children’s Rights and Gender Summary:

International gender equality principle	Source	Current legal protections in Palau
Every child shall have, without any discrimination as to race, color, sex, language, religion, national or social origin, property or birth, the right to such measures of protection as are required by their status as a minor, on the part of their family, society and the State.	ICCPR, art. 24; CRC, art. 2.	As for adults in Palau, children are protected against most forms of discrimination (but not including on the basis of sexuality). Preferential protection may be given to minors (Constitution, art. IV §5).
Every child shall be protected from all forms of physical or mental violence, injury or abuse, neglect or negligent treatment, maltreatment or exploitation, including sexual exploitation and abuse.	CRC arts. 19, 34.	Under the Penal Code and Family Protection Act, there are a broad series of provisions criminalizing child exploitation and abuse, and these offenses carry heavy penalties.

²⁵⁹ Note that previously the law specified a presumption that children aged under 10 years are conclusively unable to commit a crime, and children aged between 10–14 years were presumed to be unable to commit crimes except for murder and rape when the presumption was rebuttable (previously 17 PNC §106). This provision was repealed in 2013 (RPPL 9-21) and not replaced – it is unclear if this was a drafting mistake.

²⁶⁰ 34 PNC § 6102(a).

²⁶¹ 34 PNC § 6102(b).

²⁶² 34 PNC § 6107.

²⁶³ Division of Juvenile Justice, *Standard Operating Procedures* (Ministry of Justice Administrative Directive no. 2022-006).

²⁶⁴ Division of Juvenile Justice, *Standard Operating Procedures* (Ministry of Justice Administrative Directive no. 2022-006).

²⁶⁵ 34 PNC § 6132.

4.13. Prisoners' Rights and Gender Issues

The key issue in relation to incarceration in Palau is that of segregation between male and female prisoners, and potentially also between juvenile and adult prisoners. Over the years 2017–2023, the total prison population has fluctuated from a low of 66 up to a high of 96, and among the inmates there have been between three and five adult women at any one time. The data also show that the prison has occasionally held one or two juvenile prisoners.²⁶⁶

Palau's Constitution requires that 'accused persons lawfully detained shall be separated from convicted criminals and on the basis of sex and age'.²⁶⁷ This principle is reiterated in the Division of Corrections Standard Operating Procedure (SOP) which requires that male adult prisoners, female adult prisoners, juveniles and detainees should not be housed in the same detention area.²⁶⁸ As noted in Part 4.12 above, the law does permit the court to order that juvenile offenders be confined in alternative locations.²⁶⁹

However, the current prison facilities in Palau generally fall below international standards in terms of overcrowding and available hygiene and other facilities,²⁷⁰ and proper separation based on sex and age is not currently possible within the current prison facility. There is also no rule requiring that male or female Division of Corrections officers attend to particular prisoners.

Notably incidents in the Koror jail in late 2022 and early 2023 led to charges of rape of a minor female.²⁷¹ There was also a death of a male prisoner caused by another prisoner in the Koror jail in early 2023.²⁷²

A new prison facility is being built in Ngchesar State, Babeldaob, to replace the current jail in Koror, with expected completion in 2024.²⁷³ The new prison facility will have the capacity to segregate male and female prisoners and also to separate juveniles from the adult prison population.²⁷⁴

Prisoners' Rights Summary:

²⁶⁶ Republic of Palau, Ministry of Finance, 2022 *Statistical Yearbook*, Table 5.3., and additional data obtained directly from the Division of Corrections.

²⁶⁷ Constitution art. IV § 7.

²⁶⁸ Bureau of Public Safety, Division of Corrections Standard Operating Procedures 2022 (Ministry of Justice Administrative Directive no. 2022-004) § 4.1.

²⁶⁹ 34 PNC § 6107.

²⁷⁰ US Department of State, *Palau 2022 Human Rights Report*.

²⁷¹ Island Times, 'Amador Charged with Rape of a Minor Inmate; Police Officer Charged with Facilitating the Crime' (27 June 2023), available at: <https://islandtimes.org/amador-charged-with-rape-of-a-minor-inmate-police-officer-charged-with-facilitating-the-crime/>.

²⁷² Island Times, 'Young Inmate Stabbed in Jail, Pronounced Dead in ER' (27 February 2023), available at: <https://islandtimes.org/young-inmate-stabbed-in-jail-pronounced-dead-at-er/>.

²⁷³ Island Times, 'New Prison Nearing Completion, Slated for 2nd Qtr 2024' (18 August 2023), available at: <https://islandtimes.org/new-prison-nearing-completion-slated-for-2nd-qtr-of-2024/>.

²⁷⁴ Island Times, 'New Jail Facility's 1st Phase of Construction Half Way to Completion' (24 August 2018), available at: <https://islandtimes.org/soon-to-rise/>.

International gender equality principle	Source	Current legal protections in Palau
Men and women shall so far as possible be detained in separate institutions; in an institution which receives both men and women, the whole of the premises allocated to women shall be entirely separate.	UN Standard Minimum Rules for Treatment of Prisoners, Rule 11.	Palau has these legal protections but they are not yet fully implemented in practice.
Young prisoners shall be kept separate from adults.	ICCPR art. 10; UN Standard Minimum Rules for Treatment of Prisoners, Rule 11.	Palau has these legal protections but they are not yet fully put into practice. Wherever possible, juvenile offenders are kept out of prison through restorative justice programs.
In women’s prisons, there shall be special accommodation for all necessary prenatal and postnatal care and treatment.	UN Standard Minimum Rules for Treatment of Prisoners, Rule 28.	There is no law or rule requiring this.
In a prison for both men and women, the part of the prison set aside for women shall be under the authority of a responsible woman staff member who shall have the custody of the keys of all that part of the prison	UN Standard Minimum Rules for Treatment of Prisoners, Rule 81.	There is no law or rule requiring this.
No male staff member shall enter the part of the prison set aside for women unless accompanied by a woman staff member.	UN Standard Minimum Rules for Treatment of Prisoners, Rule 81.	There is no law or rule requiring this.
Women prisoners shall be attended and supervised only by women staff members.	UN Standard Minimum Rules for Treatment of Prisoners, Rule 81.	There is no law or rule requiring this.

4.14. Rights of Persons with Disabilities and Gender Issues

The intention of this Section of the Report is not to survey disability rights broadly, but rather to consider intersections with gender issues.

As noted above in Part 1.3, Palau ratified the *UN Convention on the Rights of Persons with Disabilities* in 2013. This provides an indication of policy directions in relation to persons with disabilities. As noted above in Part 3.6, in the past Palau has had a National Disability Inclusion Policy, but there is no policy in place currently.

Palau’s Constitution permits state preferential treatment of persons with physical or mental disabilities, but does not otherwise provide broad anti-discrimination principles.²⁷⁵ As noted above in Part 4.3, the National government may not discriminate when employing persons with disability unless their disability would impact health or safety. And, more generally employers, including those in the private sector, may not discriminate against a person with a disability with respect to

²⁷⁵ Constitution, art. IV § 5.

employment,²⁷⁶ unless the disability prevents the performance of the work in question.²⁷⁷ These anti-discrimination principles on the basis of disability could potentially be interpreted in light of the broader constitutional principle of equality before the law in a case of simultaneous gender and disability discrimination.

Some particular criminal offenses specifically relate to victims with disabilities. The offense of sexual assault in third degree includes knowingly subjecting to sexual contact another person who is mentally defective, mentally incapacitated, or physically helpless, or causes such a person to have sexual contact with the actor. This is a class C felony.²⁷⁸ It is also an offense to endanger the welfare of an ‘incompetent person’ whereby a person with custody recklessly inflicts serious bodily harm, or inflicts or permits a controlled substance to be ingested. This is a misdemeanor and carries penalties of up to 1 year prison and/or \$1000 fine.²⁷⁹

In respect to social security, a disability monthly stipend is paid to persons who are homebound or wheelchair bound or blind. This stipend cannot be received at the same time as social security benefits.²⁸⁰ No limitations such as age or gender are stipulated, but it may be means tested. This stipend is administered by the Ministry of Health and Human Services.

Disability Rights and Gender Summary:

International gender equality principle	Source	Current legal protections in Palau
Prohibit all discrimination on the basis of disability and guarantee to persons with disabilities equal and effective legal protection against discrimination on all grounds.	CRPD, art. 5.	Per Palau’s Constitution, art. IV § 5, the government may make special protective provisions may be made for persons who are ‘physically or mentally handicapped’. It is unlawful for employers to discriminate on the basis of disability (33 PNC § 3034) unless the disability prevents the performance of the work in question (33 PNC § 3035). A similar principle operates in the public service, but the safety to both the disabled person and to fellow employees should also be regarded (33 PNC §§ 202; 3037).
Recognition that women and girls with disabilities are subject to multiple discrimination, and in this regard shall take measures to ensure the full and equal enjoyment by them of all human rights and fundamental freedoms.	CRPD, art. 6.	As noted above, there is limited protection against discrimination on the basis of disability, while there is protection against state discrimination on the basis of sex (Constitution, art. IV § 5). The

²⁷⁶ 33 PNC § 3034.

²⁷⁷ 33 PNC § 3035.

²⁷⁸ 17 PNC § 1605.

²⁷⁹ 21 PNC § 804.

²⁸⁰ 34 PNC § 8503.

		intersection of the two factors, gender and disability, is not explicitly recognized by law but a court could potentially interpret different protections together.
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5. Recommendations

It is challenging to settle on recommendations on legal gender equality for a community where the roles and rights of men and women are at least partly determined by custom. It is also clear that there is no consensus among Palauans in terms of understanding or the importance placed on issues of gender equality. We also note that political considerations may impede the adoption of some recommendations – the blockage of multiple attempts to introduce maternity leave rights (see Part 2 above) is a key case in point, and here it is largely commercial interests that play a dominant role.

We must also recognize that some recommendations may require change to the Constitution, which involves additional difficulties given the procedural requirements for proposing and holding a referendum and achieving the necessary majority of votes.²⁸¹ For example, the Constitution clearly allows for gender inequality in relation to intestate succession and family relations, meaning that lower-level gender unequal provisions found in the legislation and/or customary law are validated by the Constitution.

Despite these difficulties, we can formulate recommendations for legal change where there are clear differences between Palauan law and internationally agreed principles of gender equality. Some of these recommendations have already been previously made through the Universal Periodic Review, the Sustainable Development Goals (SDGs) and Committees on the Rights of Child and the Rights of Persons with Disabilities.

- **Citizenship, Political Rights and Leadership**

The legal rights for equality of citizenship and representation of men and women is largely sound. The direct appointment of traditional male chiefs in many State legislatures and executives seems unlikely to change, and we also note that women nominate these chiefs in the first place and may continue to play decision-making roles behind the scenes.

We recommend initiating and strengthening efforts to support women’s elected leadership at national and State levels and to address the social factors that limit participation.

- **Education Rights**

²⁸¹ Constitution, art. XIV.

The rights and practices of equal access to education are well-entrenched. We recommend the continued collection and monitoring of sex-disaggregated data on school enrolment and the relative achievement and sense of inclusion of boys and girls.

- **Employment Rights**

Employment rights, both in general, and specifically in relation to gender issues in the workplace, are a key area where Palau's law falls short of international standards. We recommend the adoption of the following:

- Introduce a legal right to work;
- Introduce clear recognition of the principle of equal remuneration for equal work;
- Prohibit discrimination in all employment on the basis of sex, gender identity and sexual orientation;
- Prohibit discrimination in hiring and firing for pregnancy, and introduce protection against a pregnant woman being asked to perform work that may harm her own health or that of her child;
- Extend maternity leave protections to all workers, including the right to take leave and the right to return to the person's previous position following that leave, and a reasonable period of paid leave. Exact periods of time may refer to the ILO Maternity Protection Convention;
- Consider providing for paternity and/or partner leave for the birth of a child;
- Introduce legal protections for health and safety at work in general, and include safeguarding of the function of reproduction of women and men.

- **Employees' Social Security**

Palau's social security system generally provides equal rights. However, we recommend:

- Allowing access to surviving spouse insurance for de facto and same sex couples; and
- Providing exemptions or leniency for meeting 'insured' status for parents (especially women) who take a break from the workforce for pregnancy and early-age child-raising.

- **Healthcare**

Equal access to healthcare has a good basis in Palauan law and practice. We urge the public health system to continue to work on ensuring that LGBTQI+ persons are treated fairly, and to monitor whether the outright prohibition on abortion has any adverse effects on women's health in Palau.

- **Taxation**

The tax system does not contain any explicit gender biases. We urge the Government to monitor the impact of the PGST on different sectors of the community, including women. A more in-depth study of implicit bias in the tax system overall may be helpful.

- **Social Subsidies**

Palau's social subsidies are generally equally accessible. We recommend that the interactions between social subsidies with customary practices such as child adoption be monitored, as this may amount to limiting access to some individuals. The Government should also consider whether special efforts are required to ensure that rural women have equal access to subsidies.

- **Family Relations, Marriage and Divorce**

We recommend that the minimum age of marriage for both males and females, both Palauans and non-citizens, be raised to 18 years. This would match the legal age of majority/adulthood. We draw no distinction between formal and customary marriage here and recommend that such legal change encompass all marriages. The law should specify the legal consequences of any child marriage that may occur and facilitate dissolution of such a marriage with as little impact on the child as possible. We also advocate the introduction of a crime of forced marriage (see section on GBV below).

In addition, we recommend the removal of the grounds for divorce where a husband does not provide for his wife where failure to do so is because of his idleness, profligacy or dissipation. This might be amended to be gender neutral and be based on the assumption that each spouse should support the other, or in the alternative, a regime of 'no fault' divorce could be introduced.

- **Property and Inheritance**

We recommend the removal of favoring the first born male child in the situation of intestate inheritance of land held in fee simple where the owner was a bona fide purchaser for value. A replacement option for this would be equal division of the property among all children, both natural and adopted.

- **LGBTQI+ Rights**

Recognition of LGBTQI+ rights is generally missing in Palauan law. We recommend the introduction of constitutional, or at least legislative protections against discrimination on the basis of sexuality or gender identity, in all areas of life including employment.

We recommend allowing the registration of same-sex marriages conducted overseas as this will impact access to surviving spouse social insurance. We also recommend that same-sex (and de facto) couples might otherwise be given coverage for the surviving spouse insurance.

Taking a test case on the registration of same-sex marriages conducted overseas through the courts may have some chance of success given that the Constitution only requires that 'marriages *conducted in Palau* be between a man and woman'. The LGBTQI+ community supports the removal of the Constitutional provision on the prohibition on same-sex marriage.

We also recommend that processes be put in place to enable transgender persons to change their gender identity documentation.

- **Gender-Based Violence**

Palau's law on gender-based violence and human trafficking has been greatly strengthened in recent years and covers most areas very well. Issues with enforcement and implementation reportedly remain and we urge relevant government agencies and other supporting organizations to continue their efforts to raise awareness and empower victims to access the legal and social support services available.

We recommend the addition of a crime of 'coercive control' or 'severe psychological abuse'. We also recommend the addition of a crime of forced marriage, and to ensure that marriages concluded under force may be voidable, annulled or dissolved without undue financial or administrative burden placed on the victim. While there is no record of this being an issue in Palau, it is still recommended to put in place these legal protections.

- **Children's Rights and Gender**

Some general issues of children's rights have been raised in the reporting for the Convention on the Rights of the Child and elsewhere, and we briefly covered issues with defining child labor in this report. However, at the intersection of children's rights and gender, we find that Palauan law provides fairly strong child protection, especially against abuse and sexual exploitation. We urge the Government to continue to monitor any interactions between customary adoption practices and any gender differences in children and parents and their access to formal documentation and services. In relation to juvenile offenders, we recommend that any prison or alternative detention facilities pay attention to gender differences and needs among minors.

- **Prisoners' Rights and Gender**

We recommend that once Palau's new prison facility has been completed that the Division of Corrections ensure that principles of separation and protection for female prisoners are integrated into its Standard Operation Procedures and fully implemented.

- **Rights of Persons with Disabilities**

We recommend that anti-discrimination principles be entrenched in the Constitution and fully extended to persons with disabilities, beyond the current protections that exist in the employment field. We did not find any particular legal provisions with bearing on the intersection between disability and gender, but urge the Government to include such factors in the next national disability policy.

- **Other General Recommendations**

This study indicated that the role of signed and ratified human rights treaties remains uncertain under Palauan law. We recommend an amendment to the Constitution to clearly specify the effect of international treaties in domestic law.

It was also a major recommendation of the Universal Periodic Review that Palau should ratify and implement the remaining major international human rights treaties, and we support this recommendation. The Universal Periodic Review and the SDGs indicators also recommend the establishment of an independent national human rights institution. No such body exists in Palau although the Office of the Special Prosecutor in theory at least has broad powers to ‘receive complaints of, investigate, and prosecute any and all allegations of violations of the Constitution and laws of the Republic of Palau’.²⁸² In the absence of an independent national human rights institution, we recommend that the Office of the Special Prosecutor maintain a broad approach such that it may act on any human rights or gender inequality cases that may arise.

²⁸² 2 PNC § 503.

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