

TUVALU
NGO Submission to the United Nations Universal Periodic Review

Submission of the Legal Literacy Project, Tuvalu National Council of Women, Tuvalu
Third Session of the Universal Periodic Review Working Group, 1-12 December 2008

July 2008

1. The Tuvalu National Council of Women (TNCW) has operated as an umbrella NGO for women in Tuvalu since 1977. In 1999, it began a Legal Literacy Project (LLP) in partnership with the Pacific Regional Rights Resource Team (RRRT) and its partners but has grown into a more broad based human rights project. The LLP aims at the promotion of human rights through workshop trainings for policy-makers, communities and specific target groups like the police, NGOs and CSOs, women, youths, community paralegals, etc. The LLP also campaigns for policy and law reforms to ensure compliance with human rights Conventions. It carries out a client-referral system and where possible, offer free counseling to people.
2. This submission focuses on the human rights issues encountered by the LLP in the last 4 years. In doing so, the LLP will submit information on the status of ratification of human rights treaties by Tuvalu, reporting under human rights Conventions that Tuvalu has ratified, discriminatory laws of Tuvalu, restrictions on the exercise of human rights in Tuvalu, lack of access to justice, other human rights concerns and recommendations.

Ratification and Reporting on Human Rights Conventions

3. The LLP notes with increasing concern the slow progress being made by the Government of Tuvalu towards ratification of human rights treaties with their supporting Optional Protocols. In particular, Tuvalu is neither a party to the International Covenant on Civil and Political Rights (ICCPR)¹ nor the International Covenant on Economic, Social and Cultural Rights (ICESCR)². Tuvalu has, however, ratified the Convention on the Rights of the Child (CRC) on 22 September 1995³ and the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) on 6 October 1999⁴.
4. The LLP believes that reporting under international instruments is an integral national and international accountability mechanism. The LLP notes with concern the delay in the Government of Tuvalu submitting its CEDAW and CRC Initial Reports. On 2 July 2008, the CEDAW Initial Report was sent to the OHCHR office in Suva, while the CRC Initial Report is yet to be submitted.

Recommendations:

Recommendation 1: The LLP urges the Government of Tuvalu to ratify the ICCPR and ICESCR.

Recommendation 2: The LLP also calls on the Government of Tuvalu, as a matter of urgent priority, to submit its CRC Initial Report no later than June 2009.

¹ Adopted and opened for signature, ratification and accession by General Assembly resolution 2200 A (XXI) of 16th December, 1966. Entry into force; 23rd March 1976.

² Adopted and opened for signature, ratification and accession by General Assembly resolution 2200 A (XXI) of 16 December 1966. Entry into force; 3rd January 1976.

³ <http://www2.ohchr.org/english/bodies/ratification/11.htm>

⁴ <http://www2.ohchr.org/english/bodies/ratification/8.htm>

Sex and Gender Discrimination in the Laws of Tuvalu

5. The LLP believes that equality is at the core of human rights. The LLP has concern about the existence of sex and gender discrimination in some of the laws of Tuvalu that undermine the enjoyment of human rights.
6. One of the reasons for the existence of discrimination in the laws of Tuvalu is due to its culture. Historically, Tuvalu is a patriarchal society where women's roles are confined to the homes. Decisions of matters outside the family are left to the men. Hence, there is a lack of will on the part of women to participate in decision-making forums beyond the home and a lack of support for the participation of women at all levels of decision-making.
7. The primary source of discrimination against women is found in the *Constitution of Tuvalu* 1986. Section 27(2) of the *Constitution* is the anti-discrimination clause. It has omitted to recognize the freedom from discrimination on the ground of sex, thereby indirectly allowing for lawful discrimination on the grounds of sex or gender. This means that discrimination against women in laws, policies and practices may be sustained.
8. The LLP is also concerned about the significant discrimination in the laws relating to inheritance of lands in Tuvalu. Land scarcity is a pressing problem in Tuvalu and the discriminatory land laws put women in a further disadvantaged position. Section 15 of the *Native Lands Act* (NLA) 1956 and section 9 of the *Tuvalu Lands Code* 1962, confer more advantages to the children of first spouses over second spouses, and allow for more lands to be given to the eldest son than the daughters in the distribution of lands.
9. Land is of such vital importance that it also affects the judicial determination of custody of illegitimate children in Tuvaluan society.⁵ Section 20 of the NLA provides that custody rights will be given to the father if the father wishes to take custody after the child has attained the age of 2. This provision is discriminatory as it favours the father over the mother. Furthermore, section 20 of the NLA fails to require protection of the paramount interests of the child.

Recommendations:

Recommendation 3: The LLP calls on the Government of Tuvalu to amend section 27 of the *Constitution* and to include freedom from discrimination on the grounds of sex and gender.

Recommendation 4: The LLP also urges the Government of Tuvalu, as a matter of priority, to amend the NLA and *Tuvalu Lands Code* that discriminate against women and disadvantage children.

Recommendation 5: The LLP further calls on the Government of Tuvalu to amend section 20 of the NLA to protect the paramount interests of illegitimate children.

Restrictions on the Exercise of Fundamental rights and freedoms in Tuvalu's Bill of Rights

10. The LLP notes with concern the limitations on the exercise of rights and freedoms in Tuvalu. Section 29 of the *Constitution* states that it may be necessary, in some situations, to restrict the

⁵ See for example, *Tepulolo v Pou* [2005] TVHC 1, Case No. 17 of 2003.

exercise of human rights if their exercise is divisive, unsettling or offensive to the people, or directly threatens Tuvaluan values and culture.

11. The Constitutional restriction on the exercise of rights and freedoms has been seen to undermine freedom of belief, worship, expression, association and freedom from discrimination on the ground of religious belief. In the case of *Mase Teonea v Pule o Kaupule & Nanumaga Falekaupule* [2005] TVHC 2,⁶ the Brethren Church was banned from practicing its religion on Nanumaga Island by the Nanumaga Falekaupule (Traditional Island Assembly). In that case, the High Court held that although the ban hinders the Brethren Church's right, the Falekaupule was acting in its roles as part of the traditional culture of Nanumaga, and that there were grounds for the Falekaupule's decision that the introduction of the Brethren Church was likely to be divisive, unsettling and constituted a direct threat to the values and culture of the Nanumaga community, therefore the restriction is constitutional. In May 2006, the Brethren Church filed their appeal to the Court of Appeal. The matter is still awaiting hearing and no time frame has been established for the convening of the Court of Appeal.
12. The LLP is aware that following the decision of the High Court, several members of the Brethren Church working in the Nanumaga Kaupule (Local Government Council) were dismissed from their jobs because of their religion. Four of the ex-workers have brought unfair dismissal claims to the court and are awaiting final determination as to the amount payable.
13. The same measures as those taken by the Nanumaga Falekaupule may have been adopted and enforced by other island communities to restrict religious activities on those islands also. The LLP has received complaints regarding this matter but has not been able to conclusively confirm which islands implementing the prohibitions on new religions.
14. The LLP is concerned that, although the violations in the Brethren Church's case were implemented by a customary authority and the local government council rather than central Government, the fact that the State is aware of the issues on Nanumaga and has allowed the violations to continue, raises uncertainty as to the State's commitment to the protection of human rights in Tuvalu.
15. Furthermore, the LLP is also concerned about the limited application of international treaties ratified by Tuvalu, most notably the CRC and CEDAW. Treaties ratified by Tuvalu do not automatically become part of the laws of Tuvalu until Parliament incorporate them into its national laws.⁷

Recommendations:

Recommendation 6: The LLP calls on the Government of Tuvalu to stop the Falekaupules and Kaupules from discriminating people on the basis of religion.

Recommendation 7: The LLP also calls on the Government of Tuvalu, as a matter of urgent priority, to implement training and awareness raising in the Kaupules, Falekaupules, communities, policy-makers, to prevent future human rights violations.

Recommendation 8: The LLP also calls on the Government of Tuvalu, as a matter of urgent priority, to incorporate CEDAW and CRC into its national laws.

⁶ High Court Civil Case No. 23 of 2003.

⁷ See for example, *Tepulolo v Pou* [2005] TVHC 1, Case No. 17 of 2003.

Lack of Access to Justice

16. The LLP notes with concern the continuous problem of access to justice in Tuvalu, most notably, in accessing the services provided by the Office of the People's Lawyer. This is the only form of State funded legal aid in Tuvalu and is extremely limited. The problem is heightened because there are no private firms in Tuvalu. The Office of the People's Lawyer is the only agency that provides legal services to the people. There have been instances where the position of the People's Lawyer has remained unfulfilled for significant periods of time⁸ causing excessive delay in hearing clients' cases. Some people even gave up going after their claims.
17. The LLP is also concerned about the present situation where the Office of the People's Lawyer is acting for both parties. In the past, the Office of the Attorney General extended their service in acting for the other party/parties. Since 2007, the LLP has received complaints that the Attorney General's office is no longer affording that service to the people. Therefore, clients found that they could not obtain independent advices as the People's Lawyer was required to advise both them and the opposing party/parties in a dispute.
18. Moreover, the LLP notes with concern the appointment of magistrates at the Island Courts, Lands Courts, and the Lands Court Appeals Panel. These magistrates are often appointed due to their good standing in the community but not that they have formal qualifications to sit as magistrates. As a result, the LLP received complaints about the ineffective enforcement of maintenance orders, weak eviction orders, uncooperative magistrates, magistrates' lack of knowledge on family law and court procedures, judgments delivered verbally, and very rare to receive a written judgment of these courts within the time allowed for appeal.
19. Another important concern of the LLP is the delay of Government in setting up the Court of Appeal. Although the Court of Appeal was established as a tier of the judicial system by the *Constitution*, in practice, it does not exist. The delay in convening the Court of Appeal has caused significant delay and a restriction on access to justice for some people. For example, the appeal case of the Brethren Church, a matter of national importance, is yet to be determined with finality because of the delay.

Recommendations:

- Recommendation 9: The LLP calls on the Government of Tuvalu to increase the budget allocation for the Office of the People's Lawyer and to employ more lawyers in the Office of the People's Lawyer.
- Recommendation 10: The LLP urges the Government of Tuvalu to appoint qualified magistrates including women magistrates to hear matters that are heard by the Island Courts, Lands Courts and the Lands Court Appeals Panel.
- Recommendation 11: The LLP also calls on the Government of Tuvalu to do more training for magistrates in writing judgment or orders, court procedures, family law, property law, delivery of judgment and human rights.
- Recommendation 12: The LLP urges the Government of Tuvalu, as a matter of urgent priority, to convene the Court of Appeal no later than March 2009.

⁸ For example, there was no People's Lawyer from January to August 2007.

Other Human Rights Issues

20. There is no national human rights machinery that is charged with promoting human rights. The office of the Ombudsman, although established by the Leadership Code Act 2006 does not exist as there is no budget allocation for it. The availability of effective remedies for the human rights violations is therefore quite limited given the lack of resources allocated to the issue.
21. The LLP also raises its concern as to the zero participation of women in the Parliament of Tuvalu. The laws of Tuvalu allow equal eligibility to men and women to enter parliament. However, since independence in 1978, Tuvalu has had only 1 female politician and that was more than 4 years ago. In the last general election 2006, 2 women contested in the election and neither of them won a seat. The LLP often lobbied for temporary special measures in terms of allowing a quota for women seats in parliament. However, there has not been much support for this proposal so far.
22. Reporting and prosecution of cases of violence against women is another concern of the project. Domestic violence in Tuvalu is often overlooked due to the unavailability of data. In addition, victims of alleged domestic violence are often encouraged to accept the traditional custom of offering and accepting apologies as an adequate resolution for the offences done against them. Therefore, a lot of victims of domestic violence do not report their cases or if reported, most of them would withdraw them again and prosecution of those cases would be dropped.
23. Lastly but not the least, the LLP notes with deep concern the escalating impacts of climate change to the enjoyment of human rights in Tuvalu, and in particular, the problem of sea level rise encroaching on the people's lands and their fishing rights. Although this has not gained recognition in international human right law, the LLP strongly believes that every Tuvaluan woman, man and child, has the right to a safe and healthy environment, as the enjoyment of their human rights link and depend largely on a safe and healthy environment for them.

Recommendations

- Recommendation 14: The LLP calls on the Government of Tuvalu, as a matter of urgent priority, to set up the Office of the Ombudsman or a national human rights mechanism of some sort, no later than January 2009. Alternatively, that the Government of Tuvalu support regional initiatives under the Pacific Plan to set up a regional human rights mechanism for the Pacific so that the citizens of Tuvalu have access to independent tribunals.
- Recommendation 15: The LLP also calls on the Government of Tuvalu to set a quota for women seats in Parliament for the next general election.
- Recommendation 16: The LLP also calls on the Government of Tuvalu for the compulsory prosecution of domestic violence cases.
- Recommendation 17: The LLP also call, as a matter of urgent priority, for the right to a safe and quality environment to be recognized in the Constitution of Tuvalu and by regional and global agreements.

Dated this 21 July 2008.