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Tuvalu

Submission to the UN Universal Periodic Review

Third session of the UPR Working Group of the Human Rights Council

December 2008



Executive summary

In this submission, Amnesty International provides information under sections B, C and D, as stipulated in the *General Guidelines for the Preparation of Information under the Universal Periodic Review*:¹

In section B, Amnesty International raises concerns over access to justice, citizenship laws, gender discrimination and the status of international human rights treaties.

In section C, we describe concerns on accessibility to the main island of Funafuti and related conditions and violence against women.

In section D, Amnesty International makes a number of recommendations in the areas of concern listed.

¹ Contained in Human Rights Council Decision 6/102, Follow-up to Human Rights Council resolution 5/1, section I adopted 27 September 2007.

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B. Normative and institutional framework of the State

Access to Justice

1. The Court of Appeal has never been convened despite its establishment under sections 134-135 of the Constitution. An appeal from the High Court to the Court of Appeal was filed in May 2006 by a Trustee of the Tuvalu Brethren Church, seeking special declarations on the scope of the powers of local governing authorities to pass resolutions which purport to restrict certain freedoms. However, there has been no concrete move towards convening the Court of Appeal. This case, which relates to freedom of religion, is of great significance and public interest and it is important that the Court of Appeal is constituted to hear it. Failure to do so would deny the appellant the right to seek justice utilising the judicial system as provided for in law. More generally, in the absence of a functioning court of appeal, individuals' right to seek judicial remedy is seriously curtailed.

2. The physical location of the only High Court in Funafuti makes it very expensive for parties and witnesses residing in other islands to attend the hearing of their cases, as they often have to relocate for several days or even weeks to the capital for the duration of the hearing. This makes it both expensive and difficult for people to access the High Court, which sits twice a year.

3. From January to September 2007, the office of the People's Lawyer was vacant which denied the public access to legal advice and representation. More than 100 cases were adjourned during this time. The increasing number of cases and people seeking advice for civil and criminal matters highlights the need for more than one lawyer to serve the needs of the public. Moreover, the People's Lawyer is based on Funafuti and does not adequately service or address the needs of those who live in the outlying islands.

Citizenship and Right to a Nationality

4. The amendment of regulations under the *Passport Act* to enable 'investor immigrants' to obtain Tuvaluan passports in 1999 required such immigrants to renounce citizenship of their own nation as a precondition to obtaining the Tuvaluan passport (and to provide evidence of the renunciation). However, Tuvaluan citizenship was not conferred on a number of investor immigrants who had obtained a passport through the scheme. Several persons, some resident in Tuvalu, were thereby made stateless as a result of the scheme, in violation of international law, which prohibits states from rendering individuals stateless. The current situation is that upon expiry of their passport, some of these investors will be both without citizenship and also unable to travel outside Tuvalu. Foreign nationals who have resided in Tuvalu for at least the preceding seven years are able to apply for citizenship by naturalisation, but where such applications are granted, a fee of AU\$10,000 is payable in order to obtain the certificate of citizenship. In addition, the Citizenship Committee has not met regularly to consider citizenship applications.

5. The citizenship status of the children of investor immigrants born overseas is also in question. If born outside Tuvalu, the children are not entitled to Tuvaluan citizenship. Depending on their country of origin,

children of investor immigrants may also be excluded from citizenship of their parents' home country. The *Passports (Amendment) Bill 2008*, tabled in Parliament in May 2008, seeks to discontinue the investor immigrant passport scheme, but does not include any remedial measures to address the issue of stateless persons and those disadvantaged by the scheme. The existence of stateless persons in Tuvalu, and the practical obstacles for such persons to obtain citizenship by naturalisation, are a violation of international human rights standards and must be addressed by the government as a matter of priority.

Gender discrimination

6. Section 27(2) of the Tuvalu Constitution lists the prohibited grounds of discrimination. The words 'sex' or 'gender' are not listed as a prohibited ground, thereby allowing for unequal or discriminatory treatment of women and girls in almost all aspects of civil, political, economic, social and cultural life. Consequently, a number of laws still discriminate against women in Tuvalu.

7. Section 20 of the *Native Lands Act*, which grants custodial rights to the putative father of an ex-nuptial child, discriminates against a woman's right to custody of her child. Under this provision, in an affiliation proceeding where a man does not deny paternity of an ex-nuptial child, he will have automatic custodial rights of the child once the child is two years old. This clearly and sweepingly discriminates against a woman's right to custody of her child, as well as affecting the welfare of the child. The welfare of the child is also affected where women do not file for an affiliation case and thus forgo the necessary financial assistance (maintenance) to avoid losing their child.

8. Land inheritance laws are also discriminatory in that a larger portion of land is given to the sons than to the daughters.

9. Tuvalu's obligations under the Convention on the Elimination of All Forms of Discrimination against Women underlines the need to amend the Constitution and other relevant laws to ensure that discrimination on the grounds of sex or gender is prohibited.

International Human Rights Instruments

10. The government is party to the Convention on the Rights of the Child and the Convention on the Elimination of All Forms of Discrimination against Women. However, it is not party to the International Covenant on Civil and Political Rights, the International Covenant on Economic, Social and Cultural Rights, the International Convention on All Forms of Racial Discrimination, the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, and the Convention on the Protection of the Rights of All Migrant Workers and Members of their Families. The position of the Tuvalu courts on the applicability of international human rights treaties is that the treaties are only applicable once they have been legislated by Parliament.

C. Promotion and protection of human rights on the ground

Accessibility of Land on Funafuti

11. Overcrowding and other prevailing conditions on the main island of Funafuti increase the vulnerability and marginalisation of those who move there from the outer islands. The lack of effective planning and legislative controls on settlement patterns, and the absence of legal provisions which recognise the rights of tenants when no legal lease exists, exacerbate the situation, often leading to violations of individuals' rights to adequate health care, sustainable livelihood and a healthy environment. In many situations where lease arrangements are informal, the 'tenants' rely on the goodwill of the landowners, especially if the tenants have built permanent or semi-permanent dwellings.

12. A growing number of residents in Funafuti squat on land near rubbish dumps in very poor sanitation conditions. Other related social issues include poor housing facilities, water shortages and exposure to acute skin diseases and other health problems due to the environment they live in. Health Department Inspectors do not have any legal powers to restrict people from living in such conditions.

Violence Against Women

13. Despite the high incidences of domestic violence, many cases of domestic violence, sexual assaults and rape against women are not reported due to lack of awareness of women's rights and traditional and cultural pressures on victims.

14. Reports of traditional apologies and acceptance of these apologies for violence against women and girls, including rape, incest, and assaults are a cause of serious concern to Amnesty International as these result in impunity for serious human rights abuses and encourages their perpetuation. Amnesty International acknowledges the initiative by the Tuvalu police to engage its officers in training with the Pacific Prevention of Domestic Violence Programme.

D. Recommendations for action by the State under review

15. Amnesty International considers that there are a number of key challenges that the government of Tuvalu must address to uphold its commitment to human rights protection and calls on the government to:

Access to Justice

Ensure that the Court of Appeal is convened and functioning to hear the appeal of the Tuvalu Brethren Church case;

Find ways to make the superior court (in this case the High Court) more accessible to the general public;

Put measures in place to ensure that the office of the People's Lawyer is sustainable and has adequate human and financial resources to effectively service the needs of the public in Funafuti as well as in the other islands.

Citizenship and Right to a Nationality

Amend the relevant laws to provide remedies for stateless persons, including children, and those who have been adversely affected by the Passport scheme of 1999.

Gender Discrimination

Amend the Constitution of Tuvalu to include provisions prohibiting discrimination on the grounds of "sex" or "gender";

Review all relevant laws which discriminate or impact negatively on women and to amend laws and change policies and practices which either expressly discriminates against or perpetuate the discrimination and marginalisation of women, so as to bring them into line with the Convention on the Elimination of All Forms of Discrimination against Women and other international human rights standards.

International Human Rights Treaties

Ratify the International Covenant on Civil and Political Rights, the International Covenant on Economic, Social and Cultural Rights and other core human rights treaties;

Enact laws through Parliament to implement the provisions of the human rights treaties to which Tuvalu is a party in domestic law.

Ensure that the provisions of international human rights treaties and other standards are also implemented in policy and practice.

Accessibility of Land on Funafuti

Consult with relevant stakeholders and civil society on how to effectively address issues of accessibility of land, overcrowding and other conditions affecting the human rights of landless tenants.

Work for the enactment of legislation to protect the rights of tenants of informal agreements or leases. Promote and protect the rights of persons currently living in squatter settlements to accessing adequate health services, clean water and sanitation.

Violence Against Women

Ensure greater public awareness of the issue of domestic violence and greater involvement of government agencies and civil society.

Equip the police with the relevant tools to deal effectively with domestic and sexual violence against women.

Work for the enactment of appropriate legislation to address violence against women generally, and domestic violence in particular, after meaningful consultation with relevant stakeholders.