

UPR MONITOR

International Service for Human Rights



Human Rights Monitor Series

**UNIVERSAL PERIODIC REVIEW, 3RD SESSION
TUVALU (ADOPTION OF REPORT PENDING)
REVIEWED ON 12 DECEMBER 2008, AFTERNOON**

Overview

The Tuvalu delegation was headed by H.E. Mr. Enele Spoaga, Permanent Secretary for Foreign Affairs and Labour. Other members of the delegation were Ms. Ese Apinelu, Attorney General, Mr. Seve Lausaveve, Permanent Secretary for Home Affairs and Rural Development, and Ms. Manaema Takeshi, Multilateral Affairs Officer. Mr. Spoaga delivered the presentation and answered most of the questions raised during the dialogue. Ms. Apinelu addressed issues regarding gender based discrimination and law reform.

Attendance was low and 23 delegations took the floor during interactive dialogue. States were generally appreciative of Tuvalu's achievement in education and health service areas, while expressing concern in several others, including gender discrimination issues. A number of delegations offered technical and financial assistance to help Tuvalu overcome its capacity limitations.

The Tuvalu delegation was thorough and transparent in responding to the criticisms raised during the dialogue. However it frequently referred to a lack of human and financial resources as the fundamental reason for deficiencies, and the responses did not go beyond the scope of what was already provided in its national report and introductory statement.

General information on State under review

- Tuvalu is not a member of the Human Rights Council.
- The members of the troika for the examination of Tuvalu were Qatar, Zambia and Azerbaijan.¹
- According to its introductory presentation, civil society was closely involved in the producing of its national report and all stakeholders were consulted.

Information submitted to the Working Group

The **national report** of Tuvalu² readily admits to a discrepancy between international human rights standards and prevalent traditional practices of Tuvaluan culture, including discrimination against women and corporal punishment. Public awareness of human rights was considered to be low, and the Government expressed its

¹ Tuvalu was not present at the selection of the troika, and accordingly the President selected. Tuvalu requested one member from EEG to be substituted but it was not disclosed which one. For a full summary of the selection of troikas, see ISHR's Daily Update of 8 September 2008, available at www.ishr.ch

² A/HRC/WG.6/3/TUV/1, available at

http://lib.ohchr.org/HRBodies/UPR/Documents/Session3/TV/A_HRC_WG6_3_TUV_1_Tuvalu_E.pdf

commitment to improving the situation. It identified several issues as key national priorities aimed at growth and development, which would subsequently improve the human rights situation in the country. Climate change was identified as a major human rights challenge that could instantly negate all positive achievements.

The **OHCHR compilation of UN information**³ focuses on: equality and non-discrimination; freedom of belief and expression; right to work and labour conditions; living standards, including health care and access to education; and Government resources in terms of skills and finances.

Six stakeholders, all of which are NGOs, submitted information for the OHCHR **summary of stakeholders' information**.⁴ Problematic issues raised by the report included slow ratification of human rights treaties and their inconsistencies with domestic law; need for an Office of the Ombudsman; *de jure* discrimination against women, specifically relating to land inheritance and child custody; negligence of domestic violence due to lack of data and awareness of women's rights; limited access to justice due to geographical and financial reasons; and restricted freedom of belief and expression on the outer islands.

Interactive Dialogue⁵

Presentation by the State

Tuvalu commenced its presentation by underlying its characteristics as a small island state and the consequent challenges it faces, namely its lack of capacity and the effects of climate change. In affirming the Government's commitment to human rights despite such difficulties, Mr. Sopoaga explained the implementation of human rights in its national mechanism and in cooperation with the Pacific region. The main part of the presentation was then dedicated to addressing the written questions submitted prior to the session concerning gender equality, a national human rights institution, human rights awareness, the ratification of human rights treaties and the effects of climate change.

The delegation was candid in revealing some of its shortcomings but often attributed such problems either to lack of resources or a discrepancy in local culture and tradition. The national human rights framework was one area where a satisfactory response was provided. Mr. Sopoaga reported on the physical expansion of the legal offices and the work of Regional Rights Resources Team (RRRT) in raising human rights awareness as works in progress. Concerning the question of a human rights institution, a regional initiative was cited as a possible alternative that was already being considered by the Pacific Islands Forum.

Themes and issues

In general, delegations recognized that basic level of human rights had been achieved in Tuvalu. Many States congratulated Tuvalu on providing free and compulsory education for children between the ages of 6 and 15 and free medical services for all citizens. In recognizing its capacity as a small island state, a number of States expressed their intention to provide assistance⁶ and also called on the international community to extend their help.⁷

³ A/HRC/WG.6/3/TUV/2, available at

http://lib.ohchr.org/HRBodies/UPR/Documents/Session3/TV/A_HRC_WG6_3_TUV_2_E.pdf

⁴ A/HRC/WG.6/3/TUV/3, available

at http://lib.ohchr.org/HRBodies/UPR/Documents/Session3/TV/A_HRC_WG6_3_TUV_3_Tuvalu_E.pdf

⁵ Most statements made at the UPR Working Group can be found at <http://portal.ohchr.org/portal/page/portal/UPR>. Fill in the form at www.ohchr.org/english/bodies/hrcouncil/form.htm to receive username and password. Audiovisual archives of the meetings of the Working Group 'webcast' are available at www.un.org/webcast/unhrc/index.asp.

⁶ Switzerland, Philippines, United Kingdom.

⁷ Algeria, Zambia, Brazil, Morocco.

The most criticised issue was the absence of a provision protecting women from gender based discrimination in the Constitution, as readily admitted by Tuvalu. Delegations strongly urged Tuvalu to eliminate gender discrimination through an amendment to the Constitution and the incorporation of the *Convention on the Elimination of All Forms of Discrimination against Women* into domestic legislation.⁸ Many States also pointed to the need for reform in land law and family law in order to restore gender equality in land inheritance and child custody rights.⁹ In response, the Tuvaluan delegation affirmed its commitment to women's rights and assured that the Government was working in collaboration with stakeholders and civil society. The Attorney General also stated that the Constitution and family law were under review with the aim of incorporating women's rights into the law.

Several states also addressed concerns relating to domestic violence against women.¹⁰ Regarding the absence of data on the issue, questions were raised on how the Government was collecting data and what it planned to do to address the situation.¹¹ Suggestions included a reform of the Penal Code to criminalize domestic violence,¹² including conjugal rape¹³, and the need to raise awareness on the matter was also pointed out.¹⁴

Freedom of belief and expression was another area of concern for some States.¹⁵ Traditional and customary practices are said to be often discriminatory against individuals of certain beliefs, especially in the outer islands. Tuvalu recognized the discrepancy between the law and traditional practices. It went on to express its full commitment to address the matter where such gaps exist.

The effect of climate change was frequently raised. States called for the need to enhance awareness both among the Tuvaluan people and also within the international community.¹⁶ Since this is a matter that no single State can handle, Tuvalu was encouraged to continue its efforts in promoting cooperation among States.¹⁷ Tuvalu also emphasized the danger it faces due to the effects of climate change, and pleaded to the international community that its survival as a sovereign state and preservation of its culture and identity was a fundamental human right.

Many delegations recommended that Tuvalu prioritize ratification of international human rights treaties including the *International Covenant on Civil and Political Rights* and *International Covenant on Economic, Social and Cultural Rights*.¹⁸ Tuvalu responded by repeating its position as stated in its national report. It emphasized that it is in agreement with the substance of the human rights treaties, and that if resources are made available to carry out its procedural obligations under the treaties, ratification would only be a matter of course. Tuvalu was also advised to extend standing invitations to special procedures, and again it responded that it would not object to doing so if it was assured that this would not create an additional burden on the State.¹⁹

⁸ Switzerland, Phillipines, Turkey, Netherlands, Slovenia, Japan, Mexico, New Zeland, Germany, United Kingdom, Australia, Canada, France.

⁹ Turkey, Canada.

¹⁰ Netherlands, New Zealand, Mexico, France.

¹¹ Netherlands.

¹² Mexico.

¹³ France.

¹⁴ New Zealand.

¹⁵ Phillipines, Italy, United Kingdom, Canada, Japan.

¹⁶ Switzerland, Philippines, China, Maldives.

¹⁷ Maldives.

¹⁸ Switzerland, Philippines, Slovenia, Italia, Mexico, Japan, Australia, Zambia, United Kingdom, Brazil, Algeria, Canada, France.

¹⁹ Mexico, Latvia, Czech Republic.

Tuvalu's support in establishing a human rights institution was welcomed. Despite its proposal of a regional facility as a practical solution, in light of resource limitations, several delegations proceeded to make comments on the establishment of a national human rights institution.²⁰ A functioning Office of the Ombudsman was offered as a short term alternative to the current institutional gap,²¹ which the delegation acknowledged as an interesting possibility. The general raising of public awareness about human rights was also advocated,²² including grassroots training and heightened awareness about domestic violence.²³

States also engaged Tuvalu in discussion on the following themes: submission of its overdue report to the Committee on the Rights of the Child,²⁴ corruption,²⁵ asylum seekers,²⁶ corporal punishment,²⁷ police capacity building,²⁸ tolerance for homosexual persons,²⁹ continued consultation with civil society,³⁰ limited access to the High Court,³¹ a pending case in the Court of Appeal,³² and the outer islands trust fund.³³

Adoption of the report³⁴

The draft report of Tuvalu was adopted *ad referendum* by the UPR Working Group on the afternoon of 15 December 2008. The troika first thanked the delegation for its efforts and cooperation in finalising the report.³⁵ Tuvalu also thanked the troika for its work and States for their comments and recommendations. On accepting the majority of recommendations made, the delegate stated that many of those recommendations remained the main challenges for the Government and it is looking forward to trying to improve its overall human rights situation. The delegate also called upon the international community to provide technical support for human rights development in the country.

Any editorial changes to the draft text can be mailed to uprstates@ohchr.org

²⁰ Philippines, Turkey, New Zealand, Czech Republic, France, Brazil.

²¹ New Zealand.

²² New Zealand, Australia, Morocco.

²³ Australia.

²⁴ Italy, United Kingdom.

²⁵ Netherlands.

²⁶ Netherlands.

²⁷ Mexico

²⁸ Japan, Morocco.

²⁹ Czech Republic.

³⁰ United Kingdom.

³¹ Brazil.

³² Canada.

³³ Germany.

³⁴ A/HRC/WG.6/3/L.16

³⁵ Qatar, Zambia and Azerbaijan.

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