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## **Summary prepared by the Office of the High Commissioner for Human Rights in accordance with paragraph 5 of the annex to Human Rights Council resolution 16/21**

### **Tuvalu\***

The present report is a summary of three stakeholders' submissions<sup>1</sup> to the universal periodic review. It follows the general guidelines adopted by the Human Rights Council in its decision 17/119. It does not contain any opinions, views or suggestions on the part of the Office of the United Nations High Commissioner for Human Rights (OHCHR), nor any judgement or determination in relation to specific claims. The information included herein has been systematically referenced in endnotes and, to the extent possible, the original texts have not been altered. As provided for in Resolution 16/21 of the Human Rights Council, where appropriate, a separate section is provided for contributions by the national human rights institution of the State under review that is accredited in full compliance with the Paris Principles. The full texts of all submissions received are available on the OHCHR website. The report has been prepared taking into consideration the periodicity of the review and developments during that period.

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\* The present document was not edited before being sent to United Nations translation services.

## **I. Information provided by other stakeholders**

### **A. Background and framework**

#### **1. Scope of international obligations**

1. Tuvalu Brethren Church (TBC) recommended that Tuvalu ratify the International Covenant on Civil and Political Rights.<sup>2</sup>

2. Fusi Alofa Association Tuvalu (FAA-Tuvalu) noted that the ratification of the Convention on the Rights of Persons with Disabilities was not recognized as a national priority<sup>3</sup> and called on Tuvalu to ratify it immediately.<sup>4</sup>

### **B. Implementation of international human rights obligations**

#### **1. Equality and non-discrimination**

3. FAA-Tuvalu indicated that, although Tuvalu ratified CEDAW in 1999 and was a signatory to the Beijing Platform for Action 2005, there are still no national laws that protect the freedom from discrimination on the basis of sex or gender.<sup>5</sup> FAA-Tuvalu urged the Government of Tuvalu to amend the Constitution to include gender as a basis to prohibit discrimination.<sup>6</sup>

4. FAA-Tuvalu noted that there is still no specific provision in the Constitution that protects freedom from discrimination against persons with disabilities. To date, no action has been taken towards making amendments to the Constitution to protect this right, although, during the last UPR in 2008, Tuvalu supported the UPR recommendation 68.5 to that effect.<sup>7</sup> It recommended that Tuvalu amend the Constitution to include protection from discrimination for persons with disabilities as a matter of urgency.<sup>8</sup>

#### **2 Right to life, liberty and security of the person**

5. FAA-Tuvalu stated that domestic violence is an issue in the country and noted with great concern the lengthy period involved in the process of developing a comprehensive strategy to reduce domestic violence. It was also concerned that the Domestic Violence Bill is still awaiting its first reading in Parliament and that no national Domestic Violence Plan has been developed as yet.<sup>9</sup> It called on Tuvalu to pass, as a matter of urgency, the Domestic Violence Bill and to, just as urgently, establish a comprehensive Domestic Violence Plan to reduce domestic violence.<sup>10</sup>

6. Global Initiative to End All Corporal Punishment of Children (GIEACPC) stated that corporal punishment of children is lawful in Tuvalu, despite Tuvalu's acceptance of the recommendation 68.8 to eliminate it through reforming the Penal Code made during the UPR in 2008 and the recommendation to prohibit it in schools by the Committee on the Elimination of Discrimination against Women.<sup>11</sup>

7. Corporal punishment is lawful in the home, schools and the penal system. The maintenance of family discipline is one of the principles of the Constitution (principle 4): "Amongst the values that the people of Tuvalu seek to maintain are their traditional forms of communities, the strength and support of the family and family discipline." Cruelty to children is addressed in article 226 of the Penal Code, but this also states: "Nothing in this section shall be construed as affecting the right of any parent, teacher, or other person, having the lawful control of a child or young person to administer reasonable punishment to him."<sup>12</sup>

8. Corporal punishment is lawful in schools under article 29 of the Education Act (1976): “(1) No teacher, other than a head-teacher, shall administer corporal punishment to any pupil. (2) If a head-teacher administers corporal punishment to any pupil, he shall record details of the punishment administered and the offence for which the corporal punishment was administered in a book to be kept at the school for that purpose. (3) The Minister may give directions for further controlling corporal punishment in schools.” Article 226 of the Penal Code also applies.<sup>13</sup>

9. In the penal system, corporal punishment is lawful as a sentence for crime. It is not available under the Penal Code, the Criminal Procedure Code, the Magistrates Court Act or the Superior Courts Act, but article 8(8) of the Island Courts Act states that an island court may order a parent or guardian of a male child or young person to cane their child in lieu of any other sentence (up to 6 strokes for a child under 14 years, 10 strokes for a young person aged 14-16). Failure to carry out the order is an offence under article 8(9).<sup>14</sup>

10. There is no provision for corporal punishment as a disciplinary measure in the Prisons Act (1985), but it is not explicitly prohibited and article 226 of the Penal Code presumably applies.<sup>15</sup>

11. Corporal punishment is lawful in alternative care settings under article 226 of the Penal Code.<sup>16</sup>

12. GIEACPC recommended that legislation be enacted explicitly to prohibit all forms of corporal punishment of children in all settings, including the home and as a sentence of island courts, as a matter of priority.<sup>17</sup>

### 3. Freedom of religion or belief

13. TBC stated that the Court of Appeal was convened in Tuvalu on 8 and 9 September 2009 in order to hear the appeal in the *Mase Teonea v Nanumaga Kaupule* (“*Teonea v. Kaupule*”) case and that the judgment was delivered on 4 November 2009, whereby the Falekaupule Resolution of 4 July 2003, which banned the Brethren Church from seeking converts on Nanumaga, was declared contrary to the Constitution. TBC indicated, however, that, although the Court of Appeal ruled in favour of Mase Teonea, a pastor of the Tuvalu Brethren Church, the decision is not implemented. Mase Teonea is still forbidden from travelling to Nanumaga, and TBC is still banned on Nanumaga.<sup>18</sup>

14. TBC stated that, instead of implementing the decision of the Court of Appeal, the Parliament enacted the Religious Organization Restriction Act on 13 August 2010, according to which:

- the establishment of any religion on any island of Tuvalu is restricted, unless it received approval from the island Falekaupule;
- a Falekaupule shall not withhold approval for establishment of any religion unless it is satisfied that the spread of beliefs and practices by the religious organization or association may directly threaten the values and culture of the island community;
- a Falekaupule may withdraw any approval granted for the establishment of a religious organization or association if it is satisfied that the beliefs and practices of the religious organization or association directly threatens the values and culture of the island community or they are divisive, unsettling or offensive to the people;
- a decision made by a Falekaupule shall not be questioned in any court of law;
- any person who uses his premises for unauthorized religious gathering commits an offense and shall be liable upon conviction to a fine not exceeding \$500; and

- any person who attends or participate in any unauthorized gathering shall be liable upon conviction to a fine not exceeding \$200.<sup>19</sup>

15. TBC stated that, the Government used to have authority for the establishment of any religion in Tuvalu, and all religious organizations had to apply to be registered at the Government Office. However, the Religious Organization Restriction Act removed that authority from the Government and vested it upon the respective island Falekaupule.<sup>20</sup>

16. TBC indicated that the Religious Organization Restriction Act was enacted to defeat the ruling of the Court of Appeal and that it was directly going against the UPR recommendations 67.9, 67.10, and 67.13. It considered this new Act directly limited its freedom of religion, freedom of worship, freedom of beliefs, and freedom of expression, which were provided by the Tuvalu Constitution and the Universal Declaration of Human Rights.<sup>21</sup>

17. TBC stated that, as a result of this Act, it had received letters from the Falekaupule of Nanumaga and Funafuti islands informing that its religion had been banned from their islands. The Funafuti Falekaupule explained TBC's religious activities were in conflict with the island traditions and values, while the Nanumaga Falekaupule explained that, as a result of the new Act, TBC's religion was forbidden on their island. The Religious Organization Restriction Act forbids any opportunity for TBC to challenge the Falekaupule decision in any court of law. Although TBC was established on most of the islands, due to the Religious Organization Restriction Act, more islands of Tuvalu would follow Nanumaga and Funafuti Falekaupule decisions to discontinue TBC from practicing their faith on their islands.<sup>22</sup>

18. TBC recommend that the Government of Tuvalu implement the ruling of the Court of Appeal and inform the public of the result of the Court of Appeal; remove completely the Religious Organization Restriction Act; remove all laws that restrict freedom of religion and discriminations based on religion and beliefs; and return authority for establishment of any religion in Tuvalu from island Falekaupule to the Government.<sup>23</sup>

#### **4. Persons with disabilities**

19. FAA – Tuvalu saw, as a significant achievement, the establishment of the school for children with special needs in 2011.<sup>24</sup>

20. FAA – Tuvalu was, however, concerned with the exclusion of persons with disabilities from relevant key strategic areas in Tuvalu National Strategic Development Plan II Mid-term Review (Te Kakeega II Mid-term Review/TKII MTR): Action Plan 2015.<sup>25</sup> It recommended that Tuvalu urgently develop a policy on disability that would help offset the exclusion of persons with disabilities from certain key areas in its National Strategic Planning Framework, and to explore ways to fully mainstream development priorities of persons with disabilities into the TKII MTR: Action Plan 2015.<sup>26</sup>

21. FAA-Tuvalu noted with growing concern the slow progress of the Government of Tuvalu in putting into place poverty reduction measures to cater for essential needs of persons with disabilities, similar to those implemented for senior citizens, above 70 years of age.<sup>27</sup> It urged the Government to immediately allocate funds for persons with disabilities in the national budget as part of its poverty reduction measures and also to assist in the running of the FAA-Tuvalu School.<sup>28</sup>

22. FAA-Tuvalu commended that the Climate Change policy was endorsed last year, but stated that the consultations were not nationwide, as FAA-Tuvalu was not invited to participate in them, and so naturally, persons with disabilities are not taken into consideration in this very important document and in the nation's climate change adaptation programmes.<sup>29</sup> FAA-Tuvalu called on Tuvalu to establish policies to increase participation

of persons with disabilities in formal decision levels, particularly on important issues as gender, children's rights and climate change.<sup>30</sup>

Notes

<sup>1</sup> The stakeholders listed below have contributed information for this summary; the full texts of all original submissions are available at: [www.ohchr.org](http://www.ohchr.org).

*Civil society*

FAA-Tuvalu	Fusi Alofa Association – Tuvalu, Funafuti, Tuvalu;
GIEACPC	Global Initiative to End All Corporal Punishment of Children, London, United Kingdom;
TBC	Tuvalu Brethren Church, Funafuti, Tuvalu.

- <sup>2</sup> TBC, recommendation 26.
- <sup>3</sup> FAA-Tuvalu, p. 3.
- <sup>4</sup> FAA-Tuvalu, p. 3, recommendation 3. iv.
- <sup>5</sup> FAA-Tuvalu, p. 4.
- <sup>6</sup> FAA-Tuvalu, p. 4, recommendation 5. i.
- <sup>7</sup> FAA-Tuvalu, p. 2.
- <sup>8</sup> FAA-Tuvalu, p. 3, recommendation 3. i.
- <sup>9</sup> FAA-Tuvalu, p. 4.
- <sup>10</sup> FAA-Tuvalu, p. 4, recommendation 5. ii.
- <sup>11</sup> GIEACPC, p. 1.
- <sup>12</sup> GIEACPC, para. 2.1.
- <sup>13</sup> GIEACPC, para. 2.2.
- <sup>14</sup> GIEACPC, para. 2.3.
- <sup>15</sup> GIEACPC, para. 2.4.
- <sup>16</sup> GIEACPC, para. 2.5.
- <sup>17</sup> GIEACPC, p.1.
- <sup>18</sup> TBC, paras. 4-10.
- <sup>19</sup> TBC, paras. 11 and 12.
- <sup>20</sup> TBC, para. 13.
- <sup>21</sup> TBC, paras. 14-16.
- <sup>22</sup> TBC, paras. 17-19.
- <sup>23</sup> TBC, recommendations 22-25.
- <sup>24</sup> FAA-Tuvalu, pp.1-2.
- <sup>25</sup> FAA-Tuvalu, pp.2-3.
- <sup>26</sup> FAA-Tuvalu, p. 3, recommendation 3. ii.
- <sup>27</sup> FAA-Tuvalu, p. 3.
- <sup>28</sup> FAA-Tuvalu, p. 3, recommendation 3. iii.
- <sup>29</sup> FAA-Tuvalu, p. 3.
- <sup>30</sup> FAA-Tuvalu, p. 3, recommendation 3. v.