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Nauru

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List of acronyms and abbreviations

CEDAW	Convention on the Elimination of all Forms of Discrimination Against Women
CRC	Constitutional Review Committee
DPP	Director of Public Prosecutions
DVC	Domestic Violence Committee
DVU	Domestic Violence Unit
ECHR	European Convention on Human Rights
GEF	Global Environment Fund
ICCPR	International Covenant on Civil and Political Rights
ICESCR	International Covenant on Economic, Social and Cultural Rights
NLGC	Nauru Local Government Council
NPF	Nauru Police Force
NSDS	National Sustainable Development Strategy
NYC	National Youth Council
NZAID	New Zealand Aid (New Zealand's Overseas Development Assistance Agency)
PSIDS	Pacific Small Islands Developing States
RRRT	Regional Rights Resource Team
SOPAC	Pacific Islands Applied Geoscience Commission
SPC	Secretariat of the Pacific Community
USP	University of the South Pacific
WHO	World Health Organisation

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I. Methodology

1. Following the adoption of HRC resolution 5/1 in June 2007, Nauru's Ambassador to the United Nations in New York liaised with the Department of Foreign Affairs and Trade in Nauru to ensure that the government of Nauru was aware of its UPR reporting obligations and that it followed an appropriately consultative methodology in compiling its national report.
2. A workshop was held in May 2010, conducted by UNOHCHR, SPC and RRRT, to facilitate the conduct of the review. The workshop included participants from government departments and members of civil society. It was decided at the workshop that work on the government's national report would be undertaken by a taskforce, which included representatives from all areas of government, and which also held a number of open consultation meetings with representatives of civil society.
3. The taskforce identified the key human rights issues, initiatives and proposals for inclusion in the Report. The taskforce then appointed a drafting committee to prepare successive drafts of the Report, with each draft being refined on the basis of feedback from members of the taskforce and from Nauru's Ambassador to the UN. Civil society representatives were also provided with successive drafts of the report and given the opportunity to provide feedback. The Cabinet considered and adopted the Report prior to submitting it.

II. Background and institutional framework

A. The island and its people

4. Nauru is the world's smallest independent republic. It is a single island of 21 square kilometres located in the Pacific Ocean, 1000 km north-west of the Solomon Islands and just 40 km south of the equator. Nauru's nearest neighbour is Banaba or Ocean Island (part of Kiribati), more than 250km to the east. The island comprises a narrow flat coastal strip, and a raised central plateau.
5. Nauru has its own distinct language which contains some Micronesian elements, but is said to be 'unique and quite different from other Pacific dialects.'¹ Nauruan is predominantly a spoken language, not a written language, and English is used for all official and business purposes. Nauruan people comprise 12 traditional tribes. Nauru is divided into 14 districts, which are grouped into 8 parliamentary constituencies. The population of Nauru is approximately 10,000.
6. Nauru was colonised by Germany in 1888 and then, after World War I, became a League of Nations Trust Territory jointly administered by Britain, Australia and New Zealand. After World War II, Nauru became a United Nations Trust Territory under a class C Mandate, again jointly administered by Britain, Australia and New Zealand (but in practice administered by Australia). Nauru gained independence on 31 January 1968.

B. Economy and development

7. Nauru's principal resource, and only natural resource of significance other than fisheries, is phosphate rock. Phosphate was discovered in Nauru at the beginning of the 20th Century and has been mined since that time, devastating much of the natural environment.

8. Nauruan control of the phosphate industry almost coincided with independence, and although two thirds of the island's phosphate had already been mined by foreigners, Nauru's economic prospects looked bright based on the revenue that would be generated from the remaining phosphate. The revenue was shared between the Government, landowners, the Nauru Local Government Council and the Nauru Phosphate Royalties Trust. Nauru provided extensive public services for free and also concentrated on foreign investments which were intended to provide for the day when the phosphate reserves would be exhausted. However corruption, poor investment decisions, overspending and lack of planning meant that by the 1990s when the phosphate was almost completely gone, Nauru's assets had almost disappeared, the government was running deficit budgets, and the government was eating into reserves to finance the budget deficits.²

9. The standard of living in Nauru has dropped severely since this economic crisis. For a period in the 1970s and 1980s, Nauru had the highest per capita GDP in the world. Today many Nauruans have no source of income, poor housing conditions, and limited access to clean water and fresh food.

10. Nauru's phosphate reserves are now largely depleted, and it is estimated that phosphate will be completely exhausted within 40 years. Nauru's only notable sources of local revenue are still phosphate and fisheries, but approximately 70 per cent of Nauru's annual budget is funded by foreign aid.

11. In November 2005, the Government of Nauru finalised its National Sustainable Development Strategy (NSDS).³ The NSDS is a 25-year strategic plan, which sets out the reforms required to achieve a positive future for Nauru and a better quality of life for Nauruans. Broad consultations were held to ensure the NSDS would reflect the priorities of the people of Nauru. The NSDS was reviewed and revised in 2009. One of the NSDS priorities is to achieve 'a stable, trustworthy, fiscally responsible government with transparent and accountable parliamentarians, cabinet and public service'. This goal will require 'essential governance, policy and institutional reforms'.

C. Normative and institutional framework

1. System of government

12. Nauru's Constitution establishes a system of parliamentary responsible government, with a unicameral Parliament of eighteen members, elected from eight multi-member constituencies. The President, who is both head of government and head of state, is elected by Parliament from among its members, and then appoints four or five members of Parliament to be Ministers. The Constitution vests executive power in the Cabinet (President and Ministers). Judicial power is vested in the Supreme Court of Nauru.

13. There is universal suffrage for citizens from the age of twenty years. Parliament is elected for a maximum term of three years.

14. Until 1992 Nauru had a Local Government Council ('NLGC'), but there is no longer any formal system of local government. Each district has its own community committee, with elected representatives, which undertakes community projects and often represents the district in various government and civil society consultations and similar fora. Community committees are not prescribed by law, nor are they legally regulated.

2. Constitutional protection of human rights

15. Part II of the Constitution of Nauru, Fundamental Rights and Freedoms, protects certain rights of individuals against the state, but these rights are qualified by lists of exceptions. Part II of the Constitution of Nauru is based largely on the European

Convention on Human Rights ('ECHR'), which had earlier also served as the model for Part II of the Constitution of Western Samoa (prepared with the assistance of the same adviser who assisted Nauru: Professor Jim Davidson).

16. Figure 1 lists the provisions of Part II of the Constitution, and thereby serves as a quick reference list of the civil and political rights that are protected under the Constitution. Although Part II of the Constitution does not expressly specify whether the listed rights and freedoms exist as against the state only or also as between individuals, some provisions appear on their face to apply to the actions of private individuals, 'thereby opening the way to actions for damages for deprivation of constitutional rights.'⁴

Figure 1 – Provisions of Part II of the Constitution of Nauru

Article 3	Preamble
Article 4	Protection of right to Life
Article 5	Protection of personal liberty
Article 6	Protection from forced labour
Article 7	Protection from inhuman treatment
Article 8	Protection from deprivation of property
Article 9	Protection of person and property
Article 10	Provision to secure protection of law
Article 11	Freedom of conscience
Article 12	Protection of freedom of expression
Article 13	Protection of freedom of assembly and association
Article 14	Enforcement of fundamental rights and freedoms
Article 15	Interpretation

17. The content of most of the rights provisions in Part II is apparent simply from their title, but some warrant brief explanatory comment here. The fact that the marginal note to Article 3 refers to it as the 'preamble' is somewhat confusing, because Article 3 is not a constitutional preamble in the normal sense. It is likely that it is meant to serve as an introduction or preamble to Part II of the Constitution, or, more substantively, as an equal protection provision. It is likely also that when Article 82(3) provides that the 'preamble and the marginal notes to this Constitution do not form part of this Constitution', it is referring to the preamble to the Constitution (the preambular words that precede Article 1) and not to Article 3. Therefore, unlike a constitutional preamble, Article 3 *does* form part of the substantive Constitution and may also confer substantive rights.⁵

18. Article 4 offers a very weak protection of the right to life, due to the number and vagueness of the exceptions to the right. Unlike its counterpart in Article 2 of the ECHR, Article 4 does not provide for positive protection of the right to life by law.

19. Article 4(1) provides that no person shall be intentionally killed, except in fulfilment of a death penalty for an offence which attracts such penalty. The law of Nauru does not provide for the death penalty,⁶ but the effect of Article 4(1) is that Parliament is not proscribed from passing a law which does provide for such penalty.⁷

20. Article 10 protects the rights of accused persons, including the presumption of innocence, the right to a fair trial and the right to silence. The right to have civil claims fairly heard and determined by an independent and impartial court within a reasonable time is also protected by Article 10.

21. Jurisdiction and standing for enforcement of constitutional rights is set out in Article 14, which provides that the rights and freedoms in Part II are enforceable by the Supreme Court at the suit of a person having an interest in the enforcement of the relevant right or freedom. The Court may make all such orders as are necessary and appropriate for the purposes of enforcing rights and freedoms.

3. Constitutional review

22. In 2004 the Scotty government decided to embark on a process of constitutional review, because the government believed that there were some inadequacies in the Constitution that needed to be addressed, and because there was considerable public demand for constitutional reform. Preparations for the review included the introduction and passage of a law to establish the parliamentary Standing Committee on Constitutional Review, known as the CRC. In 2006, the CRC resolved to proceed with a thorough process of constitutional review, which was designed to include six steps as set out in Figure 2, below.

23. The constitutional review process was designed to be inclusive and to be responsive to the needs of Nauru and the demands of the people of Nauru. Article 84 of the Constitution, which prescribes the procedure for constitutional amendment, demands only steps 5 (a bill to amend the Constitution must sit in Parliament for at least 90 days between its introduction and passage, and must be approved by at least two thirds of the total number of members of Parliament) and 6 (any law that proposes to amend an Article listed in the Fifth Schedule must also be approved by two thirds of the votes validly cast in a referendum). However, steps 1 to 4 enabled Parliament to entertain bills that had been based on input from the people and independent recommendations from a constitutional review commission, and also gave the people of Nauru a number of opportunities to participate actively in the process of reviewing their Constitution.

24. The proposed changes to the Constitution were contained in two separate bills: the *Constitution of Nauru (Parliamentary Amendments) Bill* and the *Constitution of Nauru (Referendum Amendments) Bill*. Both Bills were passed unanimously on 21 August 2009 by all fifteen members who were present in the House, exceeding the requirement for approval by two thirds of the total number of members (12). The *Constitution of Nauru (Parliamentary Amendments) Act* was certified by the Speaker and is therefore law, but it is a law that has not yet come into force. The second Bill could not be certified unless and until it was approved by referendum.

Figure 2 – Nauru Constitutional Review Process

Step 1	Public Awareness a campaign to raise public awareness of the review and of the Constitution and possible amendments	July–August 2006
Step 2	Public Consultation a series of forty public consultation meetings around Nauru, and the receipt of written submissions from the public	October–November 2006

Step 3	Independent Review Commission the establishment of an independent Constitutional Review Commission that took account of the views expressed by the public through the consultation process and made recommendations for amendment to the Constitution	December 2006–February 2007
Step 4	Constitutional Convention a Constitutional Convention was held over a period of 6 weeks in 2007 to debate the recommendations of the Commission. The Convention consisted of both elected and appointed members. Two draft bills were prepared to reflect the motions passed by the Convention	April–May 2007
Step 5	Parliament consideration of the bills by the Parliament, including 5 weeks’ detailed consideration in the Select Committee on Constitutional Amendment Bills in early 2009, and 3 weeks’ detailed debate in the Committee of the Whole in June and August 2009; Parliament passed the 2 constitutional amendment bills on 21 August 2009	June 2007–August 2009
Step 6	Referendum a referendum on certain proposed constitutional amendments that require approval by referendum was held on 27 February 2010, and did not succeed	February 2010

25. A number of the constitutional amendments passed by Parliament are designed to enhance accountability and transparency in relation to public finance. Others aim to make the Constitution easier to understand by clearly stating the function of each of the arms of government and main public institutions created under the Constitution. Some of the amendments passed that do not require approval by referendum include the insertion of a leadership code in the Constitution, and the establishment of an Ombudsman. A change to make the Speaker of Parliament a non-MP can also proceed without approval by referendum.

26. The referendum concerned only the second of the two constitutional amendment bills: the *Constitution of Nauru (Referendum Amendments) Bill*. The proposed changes contained in that Bill included changing the method of electing the President from election by Parliament to direct popular election, and adding new rights protections to the existing bill of rights, such as the right to information, access to education and children’s rights. The amendments to existing rights provisions and the proposed new rights provisions contained in the Bill are listed in Figure 3, below. The Bill required the support of at least two thirds of the votes validly cast at referendum in order to become law and to take effect.

Figure 3 – Proposed amendments to existing provisions of Part II of the Constitution

Art 3	Preamble	Change heading to ‘Right to Equality’ and amend to allow equal rights and freedoms and freedom from discrimination
Art 4	Protection of right to Life	Amend to include positive right to life, to delete ref to death penalty, and to remove defence of public property from list of exceptions
Art 5	Protection of personal liberty	Amend exception of order for welfare from 20 to 16 years; amend clause (4) to include ‘any subordinate court’
Art 8	Protection from deprivation of property	New clause (1A) be inserted to make provision for how ‘just terms’ are to be determined by court
Art 9	Protection of person and property	Add new provision to Article 9(1) re privacy of communications and insert new clause 9(1A) re evidence obtained in contravention of Art 9 cannot be used to support criminal conviction
Art 10	Provision to secure protection of law	Insert new clause to provide that no law shall prevent a citizen bringing civil action against the Republic or its instrumentalities
Art 14	Enforcement of fundamental rights and freedoms	Amend to broaden standing to include person acting on behalf of another or association acting on behalf of members
Art 15	Interpretation	Insert new provision to require Court to promote the values that underlie a democratic society based on freedom and equality incl have regard to public international law, and insert proportionality test for laws that limit rights; delete definition of ‘public property’ and to further insert a definition of ‘child’ for the purposes of Art 13H (so that children’s rights cover anyone up to 18, not just anyone up to 14 as would otherwise be the case under the Interpretation Act)

27. The referendum that was held on 27 February 2010 was the first time a referendum had been conducted in Nauru. Nauruans entitled to vote at a general election were entitled to vote at the referendum. Voters were asked to vote ‘yes’ or ‘no’ to the question whether they approved of the *Constitution of Nauru (Referendum Amendments) Bill*. The referendum was preceded by an extensive information campaign, so that voters had the opportunity to gather all information they needed about what is in the bill and the

opportunity to form an informed opinion about whether or not they supported it. A mobile information centre toured Nauru throughout January and February 2010, distributing written information and explaining the proposed amendments to voters. Awareness materials were also made available online. Information was broadcast on television and radio. Public meetings were conducted throughout the districts by the Referendum Team.

28. The referendum did not receive the two thirds' support required for the proposed changes to take effect. 67 per cent voted 'no', and 33 per cent voted 'yes'.⁸

29. If at least two thirds of the votes validly cast in the referendum had been in support of the proposed constitutional amendments, all amendments to the Constitution would have come into effect on the day of the next general election, which was 24 April 2010. The amendments to Part II of the Constitution would have made Nauru one of the few countries in the world that provides domestic constitutional protection to a wide range of social and economic rights. It would have been the first Constitution in the world to protect the rights of disabled persons. And Nauru would have been the second country in the region after PNG to provide for constitutional protection of environmental rights.

Figure 4: Proposed new rights provisions to be included in Part II of the Constitution

Article 2E	Application (New Art re application of Bill of Rights: Part II applies to all laws and binds all three branches of govt; also binds natural and legal persons to the extent practicable)
Article 13A	Protection of right to privacy and personal autonomy
Article 13B	Right to information
Article 13C	Right to health services
Article 13D	Right to education
Article 13E	Environmental protection
Article 13F	Employment rights
Article 13G	Women's rights
Article 13H	Children's rights
Article 13I	Rights of person with disabilities

30. Although the referendum did not receive the support of two thirds of the votes cast, some of the constitutional amendments that do not require approval by referendum may still go ahead. This will require Parliament to amend the *Constitution of Nauru (Parliamentary Amendments) Act* to take account of the failure at referendum of certain interrelated amendments, and to remove cross-references to provisions that would have been in the Constitution had the referendum succeeded. It was hoped that amendments to the *Constitution of Nauru (Parliamentary Amendments) Act* would be considered by the 19th Parliament after the general election on 24 April 2010. However, due to the ongoing political stalemate, it has not been possible for the 19th Parliament or the 20th Parliament to transact any business. It is now hoped that when a new government is formed and Parliament is able to proceed with its business, Parliament will consider the necessary consequential amendments to the Act, regardless of who is in government.

4. International human rights obligations

31. Nauru has a dualistic system with respect to international law. The executive government has treaty-making power, and the entry into a treaty does not require the approval of Parliament. However, international treaty obligations do not automatically have the force of domestic law. In order to give domestic effect to treaty obligations, it is necessary for Parliament to legislate.

32. In terms of multilateral treaties of particular relevance to the UPR, Nauru is a party to Rome Statute of the International Criminal Court and the Convention on the Rights of the Child, as well as the UN Framework Convention on Climate Change and the Kyoto Protocol. Nauru is a signatory to, and has therefore expressed its intention to be bound by, the ICCPR and its Optional Protocol, the ICESCR, CEDAW, the International Convention on the Elimination of all Forms of Racial Discrimination and the Convention Against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment. Relevant treaty actions taken by Nauru are detailed in Figure 5, below.

33. Nauru's laws were already compliant with many of the requirements of the international human rights treaties even prior to Nauru's signature of the treaties, due largely to the protection of civil and economic rights in the Constitution and the fact that no law of Nauru can be inconsistent with the Constitution. In some respects however, Nauru's domestic law lags behind its international commitments to human rights. The attempt to amend the Constitution to strengthen existing rights provisions and to include protection of social and economic rights and the rights of women and children has been detailed above. Nauru is also working on domestic legislation that will further strengthen the protection of human rights, including freedom of information legislation, better protection of persons with mental illness, and environmental protection.

Figure 5 - Relevant multilateral treaty actions taken by Nauru

<i>Treaty</i>	<i>Action</i>	<i>Date</i>
Convention on the Rights of the Child	Accession	27/07/1994
United Nations Framework Convention on Climate Change	Ratification	21/03/1994
Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict	Signature	08/09/2000
Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography	Signature	08/09/2000
Second Optional Protocol to the ICCPR, aiming at abolition of the death penalty	Signature	08/09/2000
Convention on the Elimination of all Forms of Discrimination Against Women	Signature	08/09/2000
International Covenant on Economic, Social and Cultural Rights	Signature	08/09/2000
Kyoto Protocol to the United Nations Framework Convention on Climate Change	Accession	16/08/2001
International Covenant on Civil and Political	Signature	12/11/2001

<i>Treaty</i>	<i>Action</i>	<i>Date</i>
Rights		
Optional Protocol to the International Covenant on Civil and Political Rights	Signature	12/11/2001
International Convention on the Elimination of all Forms of Racial Discrimination	Signature	12/11/2001
Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment	Signature	12/11/2001
Rome Statute of the International Criminal Court	Ratification	12/11/2001
United Nations Convention Against Transnational Organized Crime	Signature	12/11/2001
Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention Against Transnational Organized Crime	Signature	12/11/2001

34. Due to Nauru's small size and limited financial and human resource capacity, Nauru finds it difficult to fulfil all international reporting obligations in a timely fashion. For example, Nauru has yet to submit its first report on compliance with the Convention on the Rights of the Child, but proposes to do so as soon as practicable.

35. Nauru has enacted domestic legislation to give effect to its commitments under the UN Convention Against Transnational and Organized Crime and the Framework Convention on Tobacco Control.

36. Nauru is currently receiving advice from officials in relation to accession to the 1951 Refugee Convention and ratification of the UN Convention Against Corruption, which advice is likely to be considered by the government of Nauru within the next few months.

5. Legislative protection of rights

37. In 2009 the Parliament of Nauru enacted the *Correctional Service Act 2009*, which prescribes a more humane approach to imprisonment than that which existed under the old legislation. The Act makes express provision for the protection of prisoners' human rights, and requires the Correctional Service to offer rehabilitation and training to prisoners. Parliament also enacted the *Tobacco Control Act in 2009*, which protects health and environmental rights by giving domestic effect to Nauru's obligations under the Framework Convention on Tobacco Control. Nauru's criminal law already provides protection for the rights of accused persons, however it contains some anachronistic provisions dating back to 1899 that are inconsistent with certain human rights. With assistance from the Australian Attorney-General's Department, Nauru is currently undertaking a major review of the Criminal Code, with the aim of introducing a modernised criminal code that is appropriate for Nauru and which accords with the Universal Declaration on Human Rights. When the review is complete, it is expected that a bill for a new Criminal Code will be introduced to Parliament, which among other things proposes that sexual activity between consenting

adults of the same sex be decriminalised, and that other anachronistic offences be abolished.

6. National jurisprudence

38. There is limited Nauruan jurisprudence on constitutional rights as a result of relatively limited constitutional litigation. This is not entirely a reflection of the infrequency of instances of alleged or actual breaches of constitutional rights, but in part also a reflection of problems with access to justice, lack of awareness of rights, and the limited capacity of the Nauruan legal profession. There is no jurisprudence on the scope of the exceptions to the rights enumerated in Part II of the Constitution. The cases of *Amoe* and *Jeremiah* (in relation to the right to life and the right to privacy and family life respectively) have been outlined above.

7. Current political situation

39. The Parliament of Nauru has been stuck in a stalemate since the beginning of 2010, with 9 members on the government side and 9 members in opposition. Two general elections have been held this year in an attempt to end the stalemate, but the elections have not altered the numbers.

40. In the general election held on 24 April 2010, two years into Parliament's maximum 3-year term, the same eighteen members of Parliament were returned. Less than two months later another general election was held, and again the newly elected Parliament remains evenly divided and therefore unable to progress to the formation of a new government and the consideration of parliamentary business.

41. Parliament's inability to consider a supplementary appropriation bill was considered by the President a threat to the economy of Nauru, and a state of emergency was declared on 11 June 2010. On the same day, the President issued a Presidential order dissolving Parliament and fixing 19 June as the date for the next general election, and a Presidential order for the withdrawal of a specified amount from the Treasury Fund.

42. Because the 19 June election failed to resolve the stalemate, Parliament was unable to consider a supply bill before the end of the financial year, and the President was compelled to obtain supply via Presidential order in exercise of his emergency powers. Presidential Order 9 issued on 30 June 2010 provided for supply to 30 September 2010, and in order for it to remain in force the state of emergency also had to remain in force. Emergency orders lapse when a state of emergency lapses. On 15 September 2010 the President issued Presidential Order 20 making further provision for supply to 31 December 2010, and in order for this order to remain in force, the state of emergency will also have to remain in force until Parliament is able to elect a President and to consider an Appropriation Bill.

43. Among the large number of proposed constitutional amendments were two in particular that were designed to avoid parliamentary stalemates and numbers games: an increase in the number of seats from 18 to 19, and making the Speaker a non-Member. As detailed in paragraph 30, above, these amendments cannot commence until Parliament approves consequential amendments to the *Constitution of Nauru (Parliamentary Amendments) Act 2009*.

III. Promotion and protection of human rights on the ground⁹

A. Rights of specific groups

1. Women

44. Nauru is a matrilineal but patriarchal society. The government has a Directorate of Women's Affairs within the Department of Home Affairs, which is responsible for monitoring and improving the status of women and the quality of women's lives. Women's Affairs, together with the Nauru Women's National Council and Young Women's Council, has established a national Action Plan for Women, which is built around the Beijing priorities and which focuses the efforts of Women's Affairs on issues such as women's health, violence against women, education and training for women, women in decision making, and women's participation in the economy. The Directorate of Women's Affairs works very closely with civil society groups and relies on an extensive network of volunteers.

45. Probably the most serious human rights issues facing women in Nauru are domestic violence, poverty and lack of representation in Parliament. In relation to the first two of these issues, some action is being taken and some improvement is discernible.

46. Domestic violence is widespread in Nauru, and is often but not always associated with alcohol abuse. The small size of the island and the closeness of the community have always made it difficult for victims of domestic violence to find assistance and shelter. Domestic violence is currently treated as ordinary assault under the criminal laws of Nauru. However, the government is currently undertaking a complete review of the Criminal Code, and proposes to include in the revised Code provisions that deal specifically with domestic violence, and which afford women greater protection from threatened, apprehended and actual domestic violence. Eliminating domestic violence in Nauru is a national priority.

47. In 2008 the Nauru Police Force (NPF), in recognition of the seriousness of the problem, established a Domestic Violence Unit (DVU) which comprises specially trained officers including women police officers. The DVU collects and maintains statistics and case information that provides a realistic picture of violence against women in Nauru. The DVU together with Women's Affairs also established a Safe-House in 2008, which is a refuge for victims of domestic violence and is the first of its kind in Nauru. Counselling services are available at the Safe-House. The Safe-House has sheltered over thirty-five women and children since its establishment. The Domestic Violence Committee (DVC), a combined effort between Government agencies and non-government stakeholders such as the churches, meets monthly to discuss issues and concerns relating to domestic violence, and to devise community strategies for reducing such violence. Awareness campaigns are conducted on a regular basis, aiming to teach victims, perpetrators and all members of the community that domestic violence is not acceptable.

48. Nauru has signed but not yet ratified CEDAW. In 2009 the Regional Rights Resources Team (RRRT) provided a workshop for Nauru's Parliamentarians on CEDAW, and government confirmed its commitment to improving the protection of women's rights. The NSDS makes recognition of women's rights and the promotion of equal opportunities a development goal; one of the strategies for reaching this goal is recognising and promoting women as equal partners in governance and all aspects of community development. One of the milestones or performance indicators to assess whether Nauru achieves this goal and successfully implements this strategy by 2012 is the ratification and implementation of CEDAW. Since 2004, Nauru has marked and celebrated International Women's Day with a public holiday.

49. Women's participation in high public office has been minimal. There is no direct barrier to women's participation however there has only ever been one woman elected to Parliament. There has been an increase in women candidates participating in general elections, with nine female candidates at the last general elections.

50. Government continues to encourage women into decision-making roles and Nauruan women currently hold a number of senior positions including the Ambassador to the United Nations, Chief Secretary, Secretary for Home Affairs, Secretary for Education, Principal Legal Officer and Consul General to Australia.

51. As part of empowering women in the private sector, Government has supported and provided relevant workshops and training such as the business skills training for underprivileged women and youth. Such training is coordinated through the Women's Affairs Division in collaboration with the Commerce and Business Development Division and facilitated by the South Pacific Commission and Commonwealth Secretariat.

2. Children

52. Nauru is a party to the Convention on the Rights of a Child. As detailed in Part B, above, Nauru attempted to include detailed provision for children's rights in Part II of the Constitution in the recent constitutional review, however the proposed change was rejected at referendum. Notwithstanding the failure of this proposal, there exist many other legal protections for the rights of children in Nauru's domestic law, including laws relating to compulsory education, guardianship and adoption, maintenance, and protections for juvenile offenders. The citizenship provisions of the Constitution also ensure that no child born in Nauru shall be stateless.¹⁰

53. There is no particular sector in Government which deals specifically with children's issues, however such issues are usually handled by the Department of Education (Youth Affairs sector), Department of Home Affairs (Women's Affairs) and the Department of Health.

54. Nauru has one secondary school, four primary schools, four infant schools, and one centre for persons living with disabilities. All schools are government-owned and run with the exception of two of the primary schools which are run by churches, with the Catholic school being subsidised by the Government. The average student-teacher ratio for early childhood education is 15.5:1, the average for primary school is 23.25:1, and for secondary school the average is 14.55:1.¹¹ It should be noted that the student-teacher ratio for secondary school is skewed by the fact that class sizes are larger in lower years due to greater student population, and that class sizes vary greatly in specialist subjects. The Government is working to improve the quality of education in Nauru, by requiring Nauruan teachers to obtain teaching qualifications which many of them presently lack. In the meantime, Nauru relies in part on expatriate teachers, but is unable to employ enough expatriate teachers to ensure that all classes at all levels are being taught by properly qualified teachers.

55. Education is free, and is compulsory up to the age of 16, however the law is difficult to enforce and there is a high rate of children leaving school having not completed secondary level. The Department of Education in conjunction with other departments such as Health and Home Affairs has attempted to address these issues through public awareness. A new student-oriented curriculum, which includes vocational courses, has been introduced to encourage students to remain in school and to broaden the opportunities available to school leavers.

56. Today people are more aware of their rights and readily seek assistance from authorities. There is an emerging confidence in the justice system, which is drawing victims - particularly the young - to report abuse and other offences.

57. The vulnerability of children is acknowledged within the legal framework. There is a rehabilitative juvenile centre for young offenders and a Juvenile Committee which deals with young offenders. There has been a general increase in young victims of crime which has been attributed to an increase in reporting behaviour.

58. The Nauru Supreme Court has considered the Convention on the Rights of the Child in determining a case regarding the adoption of a child. In the matter of Lorna Gleeson (2006)¹² the Supreme Court of Nauru found that a legislative provision which prohibited a non-Nauruan from adopting a Nauruan child was inconsistent with the Constitution and therefore unconstitutional. The adoption was allowed.

3. Youth

59. Youth face many challenges in Nauru, such as a high rate of unemployment, a high number of youth leaving school prematurely and a prevalence of young parents. Nauru's small economy and limited private sector mean that job opportunities for young people are limited. Many young people lack the basic literacy and numeracy that would enable them to compete for the limited public and private sector jobs that are available.

60. While the rights and needs of youth are issues that cut across a number of government sectors, primary responsibility for youth rests with the Youth Affairs Directorate in the Department of Education. The Directorate of Youth Affairs is working on a youth policy for government approval and implementation. The policy detail is still being finalised, but Government has already given in-principle approval to the five key objectives of the draft policy, which came out of consultations with young people and the wider community, and which are: 1. To develop the skills and capacity of young people for self-sustenance; 2. To facilitate and create income earning and employment opportunities for young people; 3. To create and support social development programs to improve lifestyles of young people; 4. To create an enabling and supportive environment for sustainable and effective youth development; and 5. To contribute to quality and effective youth development programs. Accordingly, the Directorate of Youth Affairs is already tailoring its activities in pursuit of these key objectives.

61. In response to the challenges facing young people in Nauru, programs for literacy, numeracy and life skills have been developed and implemented for unemployed youth aged between 18 and 34. These programs include work experience, subsidised internships and support training with other government departments. Weekly classes regarding the environment, commerce and business are conducted for assigned Youth Affairs students.

62. To further the interests of youth in Nauru, the National Youth Council (NYC) was created. The NYC is non-government organisation and includes representatives from affiliated youth organisations. It promotes and addresses youth concerns both nationally and internationally through participation in workshops, conferences and programs such as the Pacific Leadership Program. A number of smaller community groups, including religious youth groups and sport groups, are affiliated with the NYC. The NYC provides a connection between the Directorate of Youth Affairs, youth groups and the community.

4. People living with disabilities

63. The experience of people living with disabilities in Nauru is a challenging one. This is due primarily to lack of funding for things such as mobility aids, which affects disabled persons' participation in the community.

64. In 1997, the Able Disable Parents and Friends Association was established. Its objective was to gain government support for the community of people living with disabilities and their families. It gained the support of government and in 2002, the Able Disable Centre was established. This is a centre for educating persons living with

disabilities and is funded by the government through the Department of Education. It has six staff and currently has twenty six students, ranging from ages two to twenty-eight. The Centre also receives assistance from volunteers.

65. In 2007, the government issued an assistance allowance for persons living with disabilities. To be eligible for this allowance, certification as to a person's disability is issued by the Department of Health. In 2008, the Department for Health opened the Rehabilitation Centre, which has a professional physiotherapist.

66. As part of realising the participation of persons living with disabilities within society, government in 2009 began installing mobility ramps in public buildings. Government's commitment to the predicament of persons living with disability is evident in proposed amendments to the Constitution particularly addressing government obligations and the realisation of rights of people living with disabilities.

B. State institutions and rights

1. Police

67. The Nauru Police Force (NPF) has eighty sworn officers, of which twenty-four are women. Apart from their qualifying training courses, many police officers also receive human rights-based training in areas such as domestic violence, HIV and AIDS and prosecutions. NPF has an Internal Investigation Unit which strives to ensure full police accountability.

68. In recognition of the need to support women in the policing profession, the Women's Association Network was established within NPF in 2003. The purpose of this network is to improve the experience of women in policing and address any gender-related issues. The number of women police officers today is at a historical high, and more female officers are now applying for and occupying senior ranks.

69. The Code of Ethics to which the NPF adheres contains standards regarding leadership, relationships with the community, integrity, professionalism, respecting human rights, confidentiality, impartiality, fairness, responsibility, accountability, resource management and customer service.

70. NPF adopts a community-based policing approach which is founded on working alongside communities in addressing policing needs. This involves monthly meetings with community leaders, weekly lectures with students from the Youth Affairs directorate programs and school visitations. The NPF has established community programs such as the use of bike squads, which maintain a presence in the community.

2. Correctional Services

71. In 2009 the Nauru Correctional Service was separated from the NPF and brought under the purview of the Justice Department. Nauru has one Correctional Centre which is divided into three areas for male inmates, female inmates and juveniles. The main prison, which houses the predominant male population, presently houses 27 inmates and has a maximum capacity of 30. Prison overcrowding was a concern, and has recently been addressed through renovations and the construction of a new centre for juveniles and women. The new Juvenile Centre and female wing are able to house 20 individuals each.

72. In 2007, the Police Station which fronted the Correctional Centre was destroyed by fire. As a result, until construction of the new NPF Headquarters is complete, a modified shipping container is being used for temporary housing of persons held in remand.

73. The Correctional Service adopts a rehabilitative approach to dealing with inmates through the implementation and encouragement of self-improvement programs, life skills training and community service programs. Inmates partake in net fishing and building ovens as well as maintaining kitchen gardens. Inmates also undertake community service work such as maintaining the grass and fencing along the perimeter of the airstrip. Inmates are able to exercise their voting rights to participate in elections. From this financial year, the Directorate of Youth Affairs will be providing training for youth inmates (18-34 years of age) including literacy, numeracy and life skills.

74. Prisoners are required to comply with Correctional Centre Rules. Good behaviour may be rewarded by remission of sentence (up to one quarter of total sentence) and/or through eligibility for parole (after serving at least two thirds of a sentence).

3. Access to justice

75. Nauru has a District Court and a Supreme Court, each of which has only one judicial officer: an expatriate Resident Magistrate and an expatriate non-Resident Judge respectively (the office of Chief Justice is temporarily vacant). The expatriate judicial officers are not able to speak or understand Nauruan, and oral evidence must often be translated from Nauruan to English by the courts' administrative staff. The Supreme Court has original and exclusive jurisdiction in constitutional matters. In all other matters, parties can seek leave to appeal from a decision of the Supreme Court of Nauru to the High Court of Australia although, due to the prohibitive expense, this seldom happens. The Chief Justice of Nauru is also the Chair of the Public Service Appeals Board.

76. Nauru has few qualified lawyers, and instead relies largely on lay pleaders. The private legal profession consists of only one lawyer, who also has a full-time job as Chairman of a Trust, and five lay pleaders. The Department of Justice has an expatriate lawyer as head of department, and also employs a recently qualified local lawyer as Principal Legal Officer, and a local pleader as Public Defender. There is an independent Office of the Director of Public Prosecutions. The DPP is an expatriate lawyer, and has no other lawyers on his staff. The justice sector is supported by NZAID, which pays the salaries of Secretary for Justice, DPP, Resident Magistrate and Solicitor General (yet to be appointed). There are also two expatriate lawyers in the Office of Parliamentary Counsel, responsible for legislative drafting and provision of legal and procedural advice to Members of Parliament.

77. Until very recently, it was common for accused persons to be unrepresented. This was due to the scarcity of legal practitioners, inability to afford legal representation, and lack of awareness of the implications of being unrepresented. Government has recently created the publicly funded position of Public Defender, so that accused persons who would otherwise be unrepresented can secure free of charge the services of a pleader to act on their behalf. Other than the availability of the Public Defender, there is no budget provision for legal aid in criminal or civil matters.

78. The Government lawyers contribute to improving the overall human rights situation on the ground, by ensuring that legislation is compliant with constitutional rights, by advising government on respecting and upholding human rights in policy development and administration of the law, and by seeking to ensure that the rights of accused persons are not infringed. However, until the legal profession in Nauru is strengthened and expanded, and until people have the means to afford legal representation, access to justice will remain inadequate.

79. Two measures that government is considering in order to strengthen and expand the legal profession are the establishment of a new pleaders' training course through the local USP Centre, specifically tailored for Nauru, which can be completed within 12 months by

attending classes on weekends; and revising the policy of paying all local employees at the same local salary scales regardless of qualifications, so that, in future, Nauruans who have professional tertiary qualifications (lawyers, doctors, teachers engineers, etc) can be paid a higher salary, and Nauru can thereby minimise the exodus of Nauruan professionals to better-paid jobs overseas.

4. Access to information

80. Nauru does not yet have freedom of information legislation. The Right to Information was one of the proposed new constitutional rights put to the unsuccessful referendum in February 2010. While the failure of the referendum means that, at least for the time being, the right to information will not be included in the Constitution, the government intends to introduce freedom of information through ordinary legislation some time in 2011.

81. At present, there is no formal avenue for accessing records from the government administration. Access to many kinds of official information is prohibited by the *Official Information Act 1976*, which will be repealed or amended when freedom of information laws are introduced.

82. Government has established a Government Information Office, which provides regular press releases, public notices and other information services, and which publishes the fortnightly *Government Bulletin*. The Government has also been building the capacity of the local government media, and encouraging frank and fearless reporting. There is no independent media in Nauru. There is no legal obstacle to the establishment of private and independent media in Nauru, only the practical barriers of a small market and the underdevelopment of the private sector.

5. Health

83. Nauru has a number of major health issues, the most common and serious of which is the high rate of type 2 diabetes. Other major health issues (some of which contribute to the prevalence of diabetes) are poor nutrition, high rates of smoking and alcohol consumption, obesity and heart disease. There are also a number of environmental health issues, addressed below under 'Climate change and environment'. Life expectancy at birth is 49 for indigenous Nauruan males and 56.9 years for indigenous Nauruan females.¹³ The population growth rate is 4.1 per cent per annum.¹⁴

84. Nauru devotes a substantial portion of its limited resources to health, but still has a number of gaps in the capacity to provide a full range of medical services. Nauru has two major health facilities, Republic of Nauru Hospital and Naoero Public Health Centre. Both have recently been renovated and have improved infrastructure and equipment. Bilateral donors, regional organisations and the WHO all provide development assistance to assist Nauru's health programs and facilities. There are currently fourteen medical doctors serving the population of Nauru (a ratio of one doctor for every 714 persons).

85. All Nauruans receive free medical services on Nauru. Every year Government arranges for medical specialists to visit the island and provide services. This gives Nauruans an opportunity to seek specialist medical treatment and obtain referrals which are not otherwise readily available. The Government also makes annual budget provision for overseas medical treatment in cases that meet selected criteria. Patients whose condition cannot be remedied through treatment are not referred (patients are not sent overseas for palliative care).

86. In addition to medical treatment, the Department of Health also focuses on prevention and awareness. The Directorate of Public Health runs a number of physical activity programs and promotes and educates people about healthy living. Other

preventative and educational programs run by Public Health include Tuberculosis, HIV and AIDS and STIs Global Funds Supported Programs; Environmental Health Programs (Food Safety and Border Control issues); School Health Programs; and Immunisation programs. Public Health is also responsible for promoting and monitoring maternal and child health through the baby clinic and women's clinic. RoN Hospital houses an Ante-natal clinic which also deals with post-natal and gynaecological cases. The infant mortality rate is 24.9 per 1000 live births.¹⁵

87. Nauru lacks local capacity in terms of medical practitioners. As a result the Government has encouraged capacity building through bilateral agreements to enable Nauruans to obtain the necessary training and skills. A number of young Nauruans are currently studying medicine in Cuba. Expatriate medical professionals employed in Nauru are also responsible for capacity building among local staff.

88. Community Clinics and Community Nurses is a project aimed at bringing medical services direct to the community. The project to establish Community Clinics is in its infancy and is currently being piloted in one district. Each district has a community nurse and a community health liaison officer.

6. Immigration

89. Under an agreement with Australia, Nauru permitted a detention centre for asylum seekers to operate on the island from 2002 to 2007. The centre housed people who were seeking asylum in Australia and who had entered or attempted to enter Australia by boat without a visa. Refugees from Afghanistan, Iraq, Pakistan, Burma and Sri Lanka were housed in Centre while their applications for asylum were processed in Australia. The Centre was managed by the International Organisation for Migration (IOM) on behalf of the Australian Department of Immigration. The Centre was visited and assessed by UNHCR.

90. The possibility of reopening the Centre has been raised recently by the Australian government and the Australian opposition, and Nauru has indicated that it would be open to that possibility because of Nauru's desire to assist Australia and because of the economic benefits that the Centre would bring to Nauru.

7. Climate change and environment

91. The major environmental issues faced by Nauru are: extreme vulnerability to the impacts of climate change and rising sea-level; availability and quality of water; waste disposal; coastal erosion; reef damage; and the environmental damage caused by phosphate mining. The Government is making an effort, despite limited resources, to address these issues.

92. Almost a century of phosphate mining has devastated the natural environment on the topside of the island. The Nauru Rehabilitation Corporation is responsible for rehabilitating mined-out lands, and is beginning to implement its ambitious and technically difficult long-term rehabilitation strategy. In January 2010, the Government collaborated with SOPAC on a survey on the impact of the mining industry on the communities close to the processing plant, in particular, the levels of air and water pollution caused by the dust from phosphate processing. Results are not yet available.

93. The impacts of climate change in Nauru include sea-level rise, increasing ocean temperature and acidity, temperature extremes, worsened storms, species migration, the availability and quality of fresh water, drought, coastal erosion, and coral bleaching. Rising sea levels pose an immediate and serious threat to Nauru in terms of food security, human health and possible displacement. The vast majority of the island's population lives on the coast, which is on average 3-4 metres above sea level. Nauru is party to the United Nations

Framework Convention on Climate Change and the Kyoto Protocol. The National Adaptation Program of Action (NAPA) aimed at addressing the adverse effects of climate change is currently being prepared with assistance from UNDP/GEF and is expected to be complete by December 2010. The Government has also implemented a sea level monitoring project. Nauru, through the President and Nauru's Ambassador to the United Nations in New York, is leading the work of the Pacific Small Island Developing States (PSIDS) to lobby for greater international action on reducing climate change, and to advocate for greater international assistance to PSIDS in reducing poverty and improving food security.

94. Nauru relies on rainwater harvesting and potable underground water that is limited to the northern side of the island. There is insufficient household water catchment infrastructure. Nauru also experiences on average prolonged drought every 7 years. Increased temperatures as a result of climate change are expected to reduce the periods between droughts and to extend the length of drought periods. The standard water tanks are insufficient in volume to cater for families during drought periods. Rainwater captured on most residential and public buildings requires treatment before it can be considered safe for drinking. Two reverse osmosis units supplement the nation's water supply, but these units are unable to keep up with demand. Accessibility of non-potable ground water and potable water is a major issue and Government is working with bilateral and regional partners on a number of initiatives to improve water quality and water access.

95. The fishery resources of the South Pacific are predicted to be significantly impacted by the effects of climate change, including ocean temperature rise, increasing acidity, changing currents, and storm damage to coastal ecosystems. For Nauru, this will aggravate the existing challenges to the reef ecosystem posed by earlier over-fishing and unsustainable harvesting practices. As fish become less abundant and harder to catch in the waters around Nauru, Nauruans will be forced to reduce the amount of fish in their diets or turn to more expensive substitutes. The potential loss of Government revenue (through reduced access fees) will also threaten the ability of the Government to deliver essential services to its people. To reduce these risks the Government is working towards establishing protected areas where fishing and harvesting will be prohibited.

96. Recently the Government has developed a waste management strategy, aimed at eliminating waste disposal practices that are harmful to environmental and human health. Sewage is no longer pumped into the ocean, but is converted to manure to assist the rehabilitation of mined-out lands. The government will soon introduce public health regulations governing safe disposal of household and hazardous waste, as well as public education programs to end the burning of plastic and other toxic materials.

97. Coastal erosion and sand drift is an issue in some parts of the island. It is caused in part by lack of coastal vegetation – in some areas coastal vegetation has been removed for construction of roads or houses, while in others it has receded naturally. The Department of Commerce, Industry and Environment is in the process of designing and seeking funding for a coastal re-vegetation project to help stem the problem of coastal erosion. The Department is also undertaking coastal profiling with assistance from UNESCO, with the aim of better understanding the causes and scope of coastal erosion so as to determine the best means of redressing the problem.

98. The connection with the land forms a critical aspect of Nauruan cultural identity. Loss of land due to sea-level rise, storm surges and coastal erosion has the potential to compel Nauruans to leave Nauru as climate migrants. Such involuntary relocation would likely result in the loss of Nauru's culture and language.

8. Religious freedom

99. Freedom of conscience, thought and religion are constitutionally protected in Nauru. Free religious observance by members of the community is broadly tolerated, however the establishment of new churches on the island is controlled and restricted by the Government.¹⁶

100. Whilst there is no established state religion, the national motto is ‘God’s Will First’, and evangelical Christian programs and music are broadcast on the government television station and the government radio station. More than 80 per cent of people in Nauru, and more than 94 per cent of Nauruans, identify themselves as being of Christian faith.¹⁷ Official public ceremonies and government functions typically open and close with a Christian prayer.

101. In government schools, a period of 45 minutes per week is allocated to religious instruction. This takes the form of visits to the school by representatives of the various Christian churches. Children are broken up into groups according to the church they belong to, and receive instruction in the tenets of their church. Students who do not wish to participate in religious instruction are permitted to use the period for library study. The entire student body at government schools is also expected to say Christian prayers and sing Christian hymns at school assemblies. The question of whether this practice infringes students’ religious freedom has not yet been raised or tested before the Court.

C. Economic and cultural rights

1. Poverty reduction and food security

102. Nauru is still in the slow process of recovering from a severe economic crisis. By the late 1990s and early 2000s, not only had Nauru’s considerable wealth disappeared, but Nauru had also burdened itself with massive public debt. The economy is gradually recovering as a result of some major economic and governance reforms implemented since 2004. However, Nauru’s financial reserves are gone and there is still substantial public debt. Nauru has a very small private sector, very high unemployment, and relies heavily on foreign aid. In addition to the general economic challenges, Nauru also faces food security issues. Nauru relies almost completely on imported processed food. There is insufficient land for large-scale agriculture and food production.

103. With bilateral assistance, the Government of Nauru has been promoting self sustainability through agriculture. Kitchen garden projects are subsidised and technical assistance is provided. Government is progressing towards the establishment of a national nursery where fruit and vegetable plants are made available to communities, with the aim of reducing Nauru’s reliance on imported produce and making healthy food more accessible. In July 2010, the Breadfruit Program was initiated and individuals were given breadfruit plants. The objective of the program is to promote self sustainability and to provide a cheaper and more nutritious alternative to white rice as the staple diet. Assistance is also being provided for the raising of pigs and chickens.

104. To promote small business development and economic growth, the Government has established the Nauru Entrepreneurship Development Centre with the support of the United Nations Development Program (UNDP). The Centre provides training and skills development in how to successfully establish and manage a small business.

105. The Government is developing a policy to facilitate local and foreign investment in Nauru. The policy is likely to involve revising relevant legislation to remove obstacles and disincentives to foreign investors, and to provide appropriate incentives. Nauru is also

trying to reduce poverty and improve food security through its leadership of PSIDS, noted in paragraph 93, above.

2. Land

106. Land tenure is individual not collective. Almost all land in Nauru is privately owned, and land portions typically have hundreds of owners, each of whom owns a tiny fraction of the land portion. Land cannot be sold or transferred to a non-Nauruan, and all land leases must be approved by the President. Some indigenous Nauruans have become landless because of disinheritance, contrary to customary principles of succession.

107. Parliament in 2009 created a Select Committee on Land Issues to inquire into a range of matters including: inheritance of land, fragmentation of land portions, the administration of land matters, land records, handling of land disputes, access to land for landless Nauruans, the current state of land laws, land classification and the derivation of income from land. The Committee's terms of reference required it to seek the views of the public and to report to Parliament. The 18th Parliament was dissolved before the Select Committee could progress very far with its work. When the present political stalemate is resolved and Parliament is again able to function normally, it is likely that the Select Committee will be re-established.

3. Culture

108. Nauru lost most of its traditional culture as a result of the policies and influence of foreign administrative control. However, the Nauruan people retain their spoken language and their connection to the land, and have a strong sense of national identity.

109. The Department for Home Affairs promotes the Nauruan culture and the preservation of traditional knowledge and handicrafts. Nauruan culture and history are incorporated into school studies in an *ad hoc* manner, but are not a specific part of the formal school curriculum. Teachers at infant school level address students in the Nauruan language, but at higher levels all classes are conducted in English.

110. The Departments of Home Affairs and Education are collaborating to produce a policy on Nauruan language and culture, which will be aimed at introducing both topics into the primary and secondary school curriculum. Prior to introduction of the Nauruan language into the curriculum, the written language needs to be standardised, with agreed spelling and grammar being determined by a language committee, which will produce an official Nauruan dictionary.

IV. Concluding remarks and requests for technical assistance

111. As detailed in section C of this Report, above, there are a number of areas in which the protection of certain human rights in Nauru requires considerable improvement. In particular, eliminating violence against women, improving access to justice, improving food security, reducing poverty, and improving human and environmental health are among the greatest challenges that require significant ongoing commitment. Section C also cited examples of some tangible improvements in the human rights situation on the ground in recent years, and a number of government commitments and initiatives to further strengthen the protection of human rights in Nauru.

112. The preceding section has detailed many of the challenges faced by the people and the Government of Nauru, in particular, the difficulties attendant upon the small size of Nauru, geographical isolation, limited capacity and limited financial resources. These

challenges are ameliorated, but not eliminated, by the generous provision of technical and financial assistance from Nauru's donor partners and regional and international bodies.

113. To better enable Nauru to improve the human rights situation on the ground, the following forms of assistance from UN agencies and member states would be greatly appreciated:

- (a) technical assistance with reporting to the UN on the implementation of the Convention on the Rights of the Child and other international reporting obligations;
- (b) capacity building within the Department of Foreign Affairs and Trade to provide local staff with a greater understanding of Nauru's international human rights obligations and reporting requirements;
- (c) if Nauru accedes to the Refugee Convention, assistance with domestic legislative implementation of the Convention;
- (d) if Nauru ratifies the Convention Against Corruption (UNCAC), assistance with domestic legislative implementation of the Convention, and extensive local training on the provisions and their effect;
- (e) assistance with strategies to eliminate domestic violence and child abuse.

Notes

¹ Nancy Viviani, *Nauru – Phosphate and Political Progress*, ANU Press (1970) 4.

² Teuea Toatu, 'Keeping the Nauru Economy Afloat', (2004) 19 *Pacific Economic Bulletin* 123, 123-4.

³ The NSDS was prepared with assistance from some of Nauru's development partners: the Pacific Islands Forum Secretariat, the Asian Development Bank, and the governments of Australia, Japan and Samoa.

⁴ Peter MacSporran, *Nauru: The Constitution*, p29 of draft manuscript, later published by Seaview Press (2007).

⁵ However, the Supreme Court of Nauru considered the meaning of Article 3 in the case of *Dogabe Jeremiah v Nauru Local Government Council* ('*Jeremiah's case*'), and interpreted it in such a way as to render the Article practically meaningless. In this case Mr Jeremiah sought to enforce a right which he argued was conferred and guaranteed by Article 3, the right to 'respect for his private and family life'. Mr Jeremiah, a Nauruan, wished to marry a non-Nauruan woman, but was denied the requisite consent from the NLGC. It was 'argued that the right to respect for private and family life was an independent right and included the right to marry without limitation as to race or nationality.' However it was argued for the NLGC that no such right existed in the Constitution, and that Article 3 is merely an introduction or possibly a guide to the subsequent Articles of Part II. As none of the subsequent Articles contained a right to respect for private and family life or a right to marry, the Constitution did not confer any such rights. The Court accepted the latter argument and held that Article 3 'is clearly not intended to refer to any pre-existing rights and freedoms but only to those set out in detail in Articles 4 to 13'.

It is important to note that many of the *positive* obligations from the ECHR appear only in Article 3, and not in any of the other provisions of Part II. This means most of the positive affirmations of rights that appear throughout the ECHR such as 'everyone has the right to liberty and security of person' and 'everyone has the right to respect for his private and family life', are *not* contained in their equivalent articles in Part II of the Nauruan Constitution, but are expressed together in positive terms only in Article 3. This suggests that Article 3 was intended to have substantive meaning.

⁶ The death penalty was long thought to be part of the law of Nauru, by virtue of the adoption in 1922 of the Criminal Code of Queensland (1899); although the Code as adopted in 1922 had already been amended in Queensland to abolish the death penalty, in 1927 the Administrator of Nauru retrospectively changed the adopting provisions, so that instead of adopting the Code as it was in force in Queensland on 23 September 1922, it was deemed to have been adopted as it was in force in Queensland on 1 July 1921, so that it preceded Queensland's abolition of the death penalty. In

Republic v Amoe (Criminal case No.6/1990), the Supreme Court found that notwithstanding the action taken in 1927, the death penalty had no application in Nauru. The Court held that the 1927 could not be construed as retrospectively taking away in 1927 the right given to Nauruans in 1922 to a penal system without capital punishment, as it contained no express provision introducing the death penalty. As it affects a fundamental right, such express provision would have been necessary. In fact, because the case of *Amoe* was a case of murder, the Court need not have based its decision on the interpretation of the 1927 Ordinance, as Nauru had in 1922 also adopted the Criminal Code (Amendment) Ordinance 1907 of the Territory of Paua, which abolished the death penalty for murder. The purported effect therefore of the 1927 was to introduce the death penalty for prescribed crimes other than murder (including treason, regicide, etc).

- ⁷ It is very unlikely that the Parliament would introduce the death penalty, as Nauru is a signatory to the Second Optional Protocol to the ICCPR, and it is likely something that neither the Nauruan population nor the international community would tolerate.
- ⁸ The CRC met in the week after the referendum and resolved to conduct a survey in order to gain an understanding of the main reasons for the 'no' vote, in order that the CRC can decide whether it is worthwhile pursuing the proposed referendum amendments at a later date. However, because there are currently no members of parliamentary committees, due to the political stalemate, the survey has not yet taken place and may now be unlikely to proceed even when parliamentary committees are eventually filled. It appears from purely anecdotal evidence that the principal reasons for the failure of the referendum are likely to be: some people objected to being asked to vote 'yes' or 'no' for all referendum amendments as a package, and would have preferred separate questions for each proposed amendment (notwithstanding that they are an interrelated package); some people believe that the Constitution should not be amended in any respect because it was given to Nauru by her forefathers; some people opposed the idea of a popularly elected President, and so voted 'no' to the whole package; some people did not understand the content of the proposed amendments, and so voted 'no' out of caution; and some people were misled by misinformation actively disseminated by some civil society leaders in the lead up to the referendum, and so voted 'no' out of misapprehension that, in particular, their land rights would be detrimentally affected.
- ⁹ Because section C of this Report includes discussion of achievements, best practices, challenges and constraints, as well as discussion of key national priorities, initiatives and commitments to improve the human rights situation on the ground, the Report does not follow strictly the structure proposed by the Annex to HRC Resolution 5/1 by reiterating this material in two separate and subsequent sections (see proposed section D and E headings in Annex 1A to Resolution 5/1).
- ¹⁰ Article 73 of the Constitution provides that a person born in Nauru after Independence is a Nauruan citizen if, at the date of his birth he would not, but for the provisions of Article 73, have the nationality of any country. Article 72 has been broadened by the Naoero Citizenship Act 2005, so that a child with one Nauruan parent is entitled to be a Nauruan citizen.
- ¹¹ Department of Education, 2009.
- ¹² Miscellaneous Causes Case No.4 of 2006 NRSC 8.
- ¹³ Nauru National Census, 2002.
- ¹⁴ Nauru Bureau of Statistics, 2009.
- ¹⁵ Nauru Bureau of Statistics, 2009.
- ¹⁶ There is no legislation regulating or restricting the establishment of churches or the entry of church representatives; however government has typically used a provision of the *Births Deaths and Marriages Act 1965-2009* relating to the authorisation of religious representatives to solemnise marriages as a means of restricting the 'recognition' of new churches. In 1998 the Supreme Court of Nauru dismissed an application in which it was claimed that the government's refusal to declare the International Christian Church to be a recognised religious denomination for the purposes of authorising Ministers of that church to solemnise marriages constituted a breach of the applicant's right to freedom of religion. The Court held that it was permissible under clause (4) of Article 11 of the Constitution for the Republic to control the proliferation of competing religions in a small community, and that the applicant was not thereby compelled to be married by a Minister from a religious denomination that was not her own but could be legally married in a civil service (*In the matter of an application under Article 14(1) of the Constitution filed by Ms Ruth Dagiario*, Misc. cause No.10/1998).
- ¹⁷ Figures are taken from the report of the most recent census (2002), which made the following notes in

respect of the statistics on religious affiliation (p 18-19): ‘A question on religion was included in the 2002 census questionnaire. While it was asked of all respondents, answering this question was not compulsory. Some care with interpretation is advisable, as the recorded religion of a respondent is the religion stated by the head of the household during the census interview, which may not be the same as the church/sect that each and every household member usually attends. That is, heads of households often report all household members as belonging to the church/sect he or she belongs to him- or herself.

Forty-five per cent of the Nauruan population report that they are members of the Nauru Congregational Church, with followers of the Roman Catholic faith and members of the Nauru Independent Church accounting for a further 35.6 per cent and 13.5 per cent respectively. Only 11 Nauruans claim not to follow any religion (0.1 per cent of the population), compared to 18 per cent of non-Nauruan residents, of which the vast majority claim to adhere to other religions (42.6 per cent) or to the Roman Catholic faith (25.8 per cent).’ It should be noted that these statistics are likely to have changed since 2002, with the growing popularity of new churches, however the proportion of people identifying with some Christian denomination is likely to be relatively constant.
