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United Nations Human Rights Council
Universal Periodic Review: Nauru

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About ICAAD

ICAAD combats structural discrimination and promotes human rights norms consistent with public international law. Structural discrimination refers to systems of inequality that provide a social, political, cultural, or economic advantage to a dominant group while furthering barriers of exclusion that make marginalized communities more susceptible to violence and indignity. Structural discrimination is often operationally reliant on unresolved vestiges of direct discrimination in past eras, and may include direct discrimination in the law. By leveraging partnerships, ICAAD brings together passionate multidisciplinary teams of lawyers, data scientists, and design strategists to improve access to justice for women, girls, and other vulnerable groups while strengthening the capacity of civil society.

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Introduction

Since its last UPR Review, Nauru has taken some concrete steps to combat gender inequality and violence against women. Issues remain in terms of amending legislation to include a specific domestic violence law; better data collection; and ensuring that gender stereotypes and cultural norms don't impact accountability (sentencing) in gender based violence cases.

I. Women's Rights

A. Violence Against Women

(1) Published crime statistics are not disaggregated by the survivor's gender, so there is little documentation of domestic violence against women. The general community perception, however, is that domestic violence against women is increasing as the economic situation deteriorates.[1] In light of international pressure, Nauru has made eliminating and addressing domestic violence a national priority.[2]

1. Legislation & Domestic Policies that Address Violence Against Women & Existing Gaps

(2) **Rape**: In Nauru, the crime of rape is punishable by up to life imprisonment. But marital rape is not specifically identified as a crime in the state. That said, there have been cases where the Nauruan police have investigated and filed charges against a spouse when allegations of rape were brought against that spouse.[3]

(3) **Domestic Violence**: Nauru does not address domestic violence as a separate crime. However, Nauru has prosecuted cases of domestic violence under the laws of common assault. Under the laws of common assault, a criminal may be punished with up to one year's imprisonment for a simple assault and up to three years' imprisonment for any assault involving bodily harm.[4] Unfortunately, most domestic violence cases reported to the police are withdrawn and only a few cases actually make it to court.[5] The Crimes Act is currently being revised to include a domestic violence chapter.[6]

(4) Ideally, comprehensive domestic violence legislation that has gained significant traction throughout the Pacific Islands should be implemented. Also, during the revision phase of the Crimes Act, it is recommended that the inclusion of marital rape as a crime be directly addressed. For example, stating that there can be no defense to sexual assault based on the nature of the relationship between victim and perpetrator. Additionally, sentencing guidelines for domestic violence and sexual offenses should be strengthened with an aim to making sentences more commensurate with the gravity of these type of offenses by considering tiered (based on level of harm) and minimum sentencing standards in gender based violence cases.

(5) **Sexual Harassment**: Similar to domestic violence, Nauru has no specific laws against sexual harassment, so instances of sexual harassment must involve physical assault to be punishable by law. Sexual harassment is not believed to be widespread,[7] nonetheless, non-physical forms of sexual harassment should be criminalized and recognized as a form of discrimination.

(8) **Divorce**: The sole ground on which a petition for divorce may be presented is that the marriage has "broken down irretrievably." (Matrimonial Causes Act 1973, Part II, §8.) The Family Court is strongly encouraged to promote reconciliation between parties in divorce proceedings. For example, one section of the Matrimonial Causes Act refers to the Family Law Court attempting to "promote reconciliation of the parties on every occasion on which either of them has attended before it in the course of the proceedings." (Part II, §10(1)(e).). This can cause immense difficulty for women who are already facing societal and familial pressure to reconcile and ignores the power imbalance that exists between the spouses.

(9) **Early Marriage**: The lawful age to get married in Nauru is 16 years old and even earlier with consent. Early marriage has a profound impact on limiting opportunities for education and increasing the likelihood for violence.[8] Age for marriage should be set at 18 in line with the Convention on the Rights of the Child.

2. Law Enforcement Policy

(10) The Nauru Police Force established a Domestic Violence Unit (DVU) in 2008, consisting of male and female police officers. The role of this unit is to collect and maintain statistics and case information that provide a realistic picture of violence against women in Nauru.[9] Additionally, the DVU coordinated with Women's Affairs of Nauru and established in 2008 a temporary Safe House, which served as a refuge center for victims of domestic violence. This Safe House is the first of its kind in Nauru and has sheltered over thirty-five women and children since its establishment.[10] In 2013, the government built a new Safe House, "Eoag'n Ratequo" (House to Strangers), which now offers counseling services and a special "Building Families for Life" program for survivors of domestic violence.[11] The details of the effectiveness of these programs are unavailable.

(11) In addition to the DVU, the Domestic Violence Committee (DVC), consisting of both Nauruan government agencies and non-government organizations, e.g., churches, was established to discuss issues relating to domestic violence and to determine strategies to address the issue and reduce such violence.[12] The degree to which the DVC remains active today is unclear, but the DVC has historically and regularly conducted domestic violence awareness campaigns that aim to teach victims, perpetrators, and community members that domestic violence is unacceptable.[13]

(12) Another well-known community program, held by the Pacific Prevention of Domestic Violence Programme and the Nauruan Police, is the annual "White Ribbon Day" (November 25), which is aimed at ending violence against women and increasing awareness of domestic violence in communities around the different districts.[14] In the sixteen days prior to this national awareness day, community leaders hold informational talks through the media and in the local communities to promote a message of non-violence in households.[15]

(13) Greater engagement between NGOs and law enforcement will allow for continuing education of law enforcement on how to improve accountability in gender based violence cases and foster greater trust between women and law enforcement. Moreover, establishing a "No Drop" policy is essential in ensuring every case is properly reviewed and not summarily dismissed because of gender stereotypes and cultural norms.

II. Women's Political Participation and Employment

A. Collaboration Between Government and Civil Society: Women's Voices in Nauru's Government

(14) Women's participation in higher public office has been minimal, though this particular issue has been identified by the Women's Affairs Department (WAD) as one to address in the coming years. Specifically, WAD seeks to increase women's political participation and representation in decision making and women's economic empowerment.[16] While there is no direct barrier to women's participation, there has only ever been two women elected to Parliament.

(15) That said, in recent years, there has been an increase in female candidates participating in general election—having as many as nine female candidates in one election at one point—and women who hold more senior public positions, e.g., Ambassador to the United Nations, Chief Secretary, Secretary for Home Affairs, Secretary for Education, Principal Legal Officer and Consul General to Australia.[17] The majority of women in government, however, hold low level positions. Women also face a lot of barriers that prevent them from undertaking multiple roles. Per Nauruan cultural custom, women are primarily responsible for work in the home and for childcare, making it more difficult for women than men to devote the time required to high level posts.[18]

(16) Moreover, the Nauruan government continues to encourage women to seek higher positions in the private sector as well. Recently, the Nauruan government has supported and provided training workshops, such as business skills training for underprivileged women and youth.[19] This training is coordinated through WAD in collaboration with the Commerce and Business Development Division and facilitated by the South Pacific Commission and Commonwealth Secretariat.[20]

B. Cultural Norms Fostering Violence Against Women in Nauru

(17) Nauruan society was traditionally structured around 12 tribes that shared land between them. Tribal ties were matrilineal and property would pass to daughters rather than sons. Traditionally, families would live communally with extended family cohabiting, though familial affiliations have since replaced tribal, and nuclear family units have since become the norm.[21]

(18) Due to the matrilineal structure of traditional society, women were bestowed with a level of power domestically. However, there are indications that women feel devalued.[22]

(19) Women in Nauru enjoy formal equality under the law and there seems to be no "legal or attitudinal impediments to acceptance of the conditions of CEDAW."[23] However, in practice women are underrepresented in both governmental office and the workforce. Despite economic circumstances, many women do participate in the workforce.[24] However, for those that do work, the role of wife and homemaker is still of utmost importance.[25]

1. Treating Violence Against Women as a Familial Issue

(20) Statistics for violence against women are not readily available for the country of Nauru, and reports indicate that rape and indecent assault on women account for only 1 per cent of violent crime prosecuted.[26] National prevalence studies that are underway will hopefully provide meaningful results when the data is collected and released. However, there is also evidence to suggest that domestic violence is often treated as a

domestic or familial issue, rather than an act that invokes state responsibility.[27] While police take the prosecution of child abuse very seriously and an issue within the public domain, one woman describing an embarrassing incident involving the intervention of a police officer when she lost her temper with her child in public, there is little evidence available to demonstrate the same approach taken to domestic violence.[28]

(21) A recent joint campaign by the Pacific Prevention of Domestic Violence Programme and the Nauru Police Department has seen the creation of a series of posters in both English and the native Nauruan language addressing the issue of domestic violence.[29] These have been created to coincide with the White Ribbon Period in 2013 and demonstrate the increasing awareness within the island's police force that, far from being a domestic issue, domestic violence relates to human rights and needs to be addressed.

2. Gender Stereotypes in SGBV Cases - Case Law Survey

(22) In reviewing the Pacific Islands Legal Information Institute (PacLii) database, we reviewed 16 decisions of the Supreme Court of Nauru[30] where elements of violence against women were present. These cases span from 1975 to 2013. Of the cases, only one related to a crime that did not involve a sexual element. Further, of the cases that were reported from the Supreme Court that involved rape or some other form of sexual assault, 11 of the cases involved a child or a victim much younger than her attacker.

(23) Interestingly, it appears that the number of rape prosecutions has increased in the past ten years. Whether this is a result of failure to prosecute reported rapes in the past, failures to report crimes, both to the police and from the courts, or some other factor is uncertain.

(24) No cases for spousal rape were found during the review of the case law. This suggests that if spousal rape is a problem in Nauru, it is treated as other forms of domestic violence, i.e., as a private domestic issue.

(25) The judicial comments throughout much of the case law indicates that rape is treated as a serious crime and that sentences should reflect as much to act as a deterrent. However, sentences handed down in rape and other sexual assault cases tended to be far lower than the maximum sentences in the legislation. This may contribute to the public perception that maximum sentences will not be enforced.[31]

(26) That being said, many of the offenses involved young offenders who plead guilty, leading to lesser sentences. Many offenders expressed remorse for their actions and offered apologies. However, the Supreme Court emphasized in those situations that sexual assault was a serious offense and that a custodial sentence must be given in the circumstances, especially where the age of the accused was much greater than that of the victim or a position of trust had been breached.

(27) The sexual history of victims was mentioned in some of the cases. This would be introduced by the defense where it was suggested that a victim was promiscuous, or by the prosecution if the victim was a virgin, with the intent that this information act as a mitigating or aggravating factor, respectively. These gender stereotypes reveal the danger (both in terms of how the prosecutor and defense use such testimony) in allowing the sexual history of the victim to play a role in domestic violence or sexual offense cases.

(28) With a limited sample of gender based violence case law available to analyze, no concrete finding on the impact of gender stereotypes and cultural norms on sentencing can be made at this time. We recommend that the Nauruan government work to make these cases more accessible, which will ultimately have the

benefit of improving transparency, accountability, and consistency in how gender based violence cases are decided.

(29) On a final note, is important to highlight that Nauru did not submit a follow-up Report to the Human Rights Council, and therefore, discussion on the implementation of the recommendations Nauru accepted during the first review is limited.

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[1] United Nations Entity for Gender Equality and the Empowerment of Women, *Ending Violence Against Women and Girls, Evidence, Data and Knowledge in Pacific Island Countries, 2nd Edition,* 17 (July 2011), http://www.pacificwomen.org/wp-content/uploads/Ending-Violence-Against-Women-and-Girls.pdf.
[2] *Id.*
[3] U.S. Department of State, *Nauru 2012 Human Rights Report*, http://www.state.gov/documents/organization/204434.pdf.
[4] *Id.*
[5] Republic of Nauru Women's Affairs Department, *Beijing + 20 Review, Nauru Report*, http://www.unwomen.org/~/media/Headquarters/Attachments/Sections/CSW/59/National_reviews/Nauru_review_Beijing20.pdf.
[6] Australia Department of Foreign Affairs & Trade, *Pacific Women Shaping Pacific Development: Nauru Country Plan Summary*, 3 (July 2014), http://www.pacificwomen.org/wp-content/uploads/Nauru-Country-Plan-Summary.pdf.
[7] U.S. Department of State*, see supra* note 3.
[8] SPC, *Bejing +20: Review of progress in implementing the Bejing Platform for Action in Pacific Island countries and territories,* 102 (Feb. 2015).

[9] United Nations Human Rights Council, *Universal Periodic Review – Nauru* (January 24, 2011), http://www.ohchr.org/EN/HRBodies/UPR/PAGES/NRSession10.aspx.
[10] *Id.*
[11] Republic of Nauru Women's Affairs Department, *see supra* note 5.
[12] United Nations Human Rights Council, *Universal Periodic Review – Nauru* (January 24, 2011), http://www.ohchr.org/EN/HRBodies/UPR/PAGES/NRSession10.aspx.
[13] *Id.*
[14] Republic of Nauru Women's Affairs Department, *see supra* note 5.
[15] *Id.*
[16] *Id.*
[17] U.N. Human Rights Council*, see supra* note 9.
[18] Republic of Nauru Women's Affairs Department, *see supra* note 5.
[19] U.N. Human Rights Council*, see supra* note 9.
[20] *Id.*
[21] UNICEF Pacific Office, *Nauru. A Situation Analysis of Children, Women and Youth*, 8 and 40 (2005), http://www.unicef.org/pacificislands/Nauru_Sitan_Report_Latest_pdf.pdf.
[22] *Countries and their Cultures: Nauru*, http://www.everyculture.com/Ma-Ni/Nauru.html.
[23] UNICEF Pacific Office, *see supra* note 21.
[24] *Id.*
[25]U.S. Department of State*, see supra* note 3.
[26] *Id.* at 41.
[27] *Id.*
[28] *Id.* at 15.
[29] Pacific Prevention of Domestic Violence Programme, "White Ribbon Day in Nauru 2013," http://www.ppdvp.org.nz/2013/09/06/white-ribbon-day-in-nauru-2013.
[30] Our review was limited to this database, which unfortunately does not contain every Nauruan case at the various court levels.
[31] UNICEF Pacific Office, *see supra* note 21, at 15.