

United Nations Human Rights Council
Universal Periodic Review: Tuvalu
3rd Cycle: 30th Session

Summary

Drawing on ICAAD's research, this submission highlights issues of structural discrimination that impact women and girls in Tuvalu. The research examines Tuvalu's compliance with its international human rights obligations on the issue of violence against women and girls.

Structural Discrimination

Structural discrimination occurs when laws, policies, and societal/cultural norms generate harmful outcomes because of people's race, religion, ethnicity, gender, disability, or sexual orientation. Certain laws and policies may appear to be facially neutral, but in practice, impose significant barriers that disadvantage certain groups and prevents them from achieving substantive equality. This perpetuates barriers of social exclusion, which keeps marginalized groups from fully integrating into the social, economic, cultural, and political fabric of society.

I. Violence Against Women and Girls

a) Systemic Discrimination

1. Tuvalu has high rates of gender-based violence (GBV). According to the 2007 Tuvalu Demographic and Health Survey conducted by the Secretariat for the Pacific Community, 47% of women who responded reported experiencing some type of violence in their lifetime.¹ Domestic violence is the most common form of violence which affects 37% of women in Tuvalu.² As evidenced in previous reporting, gender inequality has proven to be pervasive in Tuvalu further perpetuating violence against women and girls.
2. According to surveys, domestic violence and sexual assault cases in Tuvalu are widely under-reported. Additionally, there are recent reports of traditional apologies taking the place of formal prosecution in offences against women. This culture of both non-reporting and impunity continues to be a problem in Tuvalu.³
3. Even in the few cases that are adjudicated, reconciliation is often used as a mitigating factor. Reconciliation refers to both formal and informal cultural practices of apology and

¹ Central Statistics Division (TCSD), SPC and Macro International Inc., *Tuvalu Demographic and Health Survey*, at 274 (2007), http://prism.spc.int/images/documents/DHS/2007_Tuvalu_DHS-Report.pdf accessed 18 September 2017.

² *Id.* at 292.

³ Dateline Pacific, *Long way to go for women in Tuvalu* (10 March 2017), <http://www.radionz.co.nz/international/programmes/datelinepacific/audio/20170210/long-way-to-go-for-women-in-tuvalu> accessed 18 September 2017.

forgiveness. It plays an important role in the close-knit communities of Tuvalu in promoting healthy communal relationships; however, these practices in the context of GBV, subsume the survivor's rights and access to justice for the benefit of the wider community.

4. The Secretariat of the Pacific Community noted in a 2013 legal report on Tuvalu that “in considering the importance of reconciliation in Tuvaluan society, it is also important for survivors of violence to be given the protection of the law. It is therefore proposed that in all cases of domestic violence, reconciliation should not be used as a mitigating factor in reducing the perpetrators sentence, nor used to reduce the charges against the perpetrator.”⁴
5. There are recent examples of reconciliation being used as mitigating factors in cases of violence against women and girls. In a case of sexual assault against a minor in 2015, the judge clearly stated that reconciliation functioned as a mitigating factor which resulted in a full suspension of the perpetrator's sentence.⁵ It is also important to note that while reconciliation can be used to rebuild communal relationships, it is also used as means to prevent prosecution in the first place.
6. Although the number of cases for analysis is limited, another issue has arisen from ICAAD's research regarding gender equity in the judicial system. In 2015, the case of ██████████ highlighted a gap in legislation wherein the judge suggested the perpetrator plead not guilty to the charges of indecent assault because his crime of forced oral sex against a 4-year-old girl did not fall into a section of the Penal Code.⁶ An outdated provision was cited which supported the recommendation for the perpetrator to plead not guilty. The Tuvalu Penal Code does not address other forms of sexual assault including anal penetration, forced oral sex, and the use of objects.⁷

b) State Response

1. Tuvalu ratified CEDAW in 1999, and the CEDAW/VAW Committee was established in 2009 to focus on legislation change regarding violence against women.⁸
2. The Police Powers and Duties Act of 2009 started the discussion of improving law enforcement procedures when dealing with domestic violence situation. Then in 2014, the Tuvaluan Government unanimously passed the Family Violence and Protection Act

⁴ Secretariat of the Pacific Community Pacific Regional Rights Resource Team, *Tuvalu: Legal Analysis on Violence Against Women*, at 62 (July 2013), <http://rrrt.spc.int/publications-media/publications/item/365-tuvalu-legal-analysis-on-violence-against-women> accessed 18 September 2017.

⁵ *Crown v Pou* [2015] TVHC 1; HC Crim Case 1.14 (12 March 2015).

⁶ ██████████.

⁷ Tuvalu Penal Code CAP. 10.20 (revised 2008).

⁸ Secretariat of the Pacific Community Pacific Regional Rights Resource Team, *Tuvalu: Legal Analysis on Violence Against Women*, at 13 (July 2013), <http://rrrt.spc.int/publications-media/publications/item/365-tuvalu-legal-analysis-on-violence-against-women> accessed 18 September 2017.

with the help of the Secretariat for the Pacific Community Regional Rights Resource Team (SPC RRRT).⁹ This legislation, when fully implemented, will be able to address many of the gaps with regard to domestic violence.

3. The Tuvalu Human Rights Action Plan 2016-2020 is a very comprehensive and ambitious plan that covers many important issues related to violence against women and girls. The Plan includes positive movement towards evaluation of new legislation, review of the Penal Code, and expanded access to judicial services.¹⁰
4. Additionally, the current Te Kakeega III Plan strives to include expanding seats for women in Parliament and including gender as a prohibited ground of discrimination in the Tuvaluan Bill of Rights/ Constitution.¹¹

c) Remaining Challenges

1. Societal attitudes still justify domestic violence in Tuvalu, which will continue to be a barrier to reporting cases and taking prosecution seriously. Gender stereotypes continue to reinforce discrimination against women in Tuvalu.¹²
2. Although the Family Violence and Protection Act 2014 addressed many gaps in domestic violence legislation, there is a lot of work to be done to ensure the women have access to judicial services and that gender bias does not preclude fair sentencing. Additionally, this legislation does not address other forms of gender-based violence like non-partner violence and sexual assault.
3. With the help of several partner organizations, ICAAD has developed the TrackGBV program in the Pacific working to increase transparency, consistency, and accountability in judicial systems. Tracking cases provides actionable data on gender-based violence including judges' attitudes and sentencing practices. In a published study that looked at 900+ cases in 7 Pacific Island Countries, the preliminary randomized analysis only found 4 cases on the Pacific Islands Legal Information Institute (PacLII), all sexual assault cases, from Tuvalu that fit the criteria for comparison.¹³ The lack of data transferred from

⁹ Dateline Pacific, *Tuvalu's women's rights record comes under review* (19 February 2015), <http://www.radionz.co.nz/international/programmes/datelinepacific/audio/20167885/tuvalu's-women's-rights-record-comes-under-review#39;s-women%27s-rights-record-comes-under-review> accessed 18 September 2017.

¹⁰ Government of Tuvalu, Tuvalu Human Rights Action Plan (2016), http://rrrt.spc.int/images/PDF_Files/Tuvalu_National_HumanRights_Action_Plan.pdf accessed 4 October 2017.

¹¹ Government of Tuvalu, Te Kakeega III Plan: National Strategy for Sustainable Development 2016 to 2020 (March 2016), <https://www.adb.org/sites/default/files/linked-documents/cobp-tuv-2017-2019-ld-02.pdf> accessed 18 September 2017.

¹² Dateline Pacific, *Long way to go for women in Tuvalu* (10 March 2017).

¹³ ICAAD and DLA Piper, *An Analysis of Judicial Sentencing Practices in Sexual & Gender-Based Violence Cases in the Pacific Island Region*, at 14 (February 2016), <https://icaad.ngo/wp-content/uploads/2015/12/ICAAD-Analysis-of-Judicial-Sentencing-Practices3.pdf> accessed on 27 June 2017.

national courts to the largest and most comprehensive regional legal database limits transparency and accountability.

4. Additionally, there is a need for more information and tracking of complaints regarding violence against women. In 2013 in the CEDAW State Report, the Tuvalu Police Department shared complaints of domestic violence which increased from 17 cases in 2009 to 223 cases in 2011. This likely resulted from the no-drop policy. However, it also demonstrates the continued prevalence of violence against women and the need for more information to be collected on both domestic violence and sexual violence complaints.
5. Sexual harassment is an area that has received little attention in Tuvalu, and there was no data collected on it in the 2007 demographic and health survey. Sexual harassment is a form of discrimination and violence with many consequences spanning women's health and safety and social, economic, and educational success.
6. Equal access to land ownership remains an issue in Tuvalu. There is continued resistance to evaluation of land legislation. Although under current legislation, women and men have equal rights to *kaitasi* land, the titleholder is almost always a man. In practice, the titleholder can transfer or mortgage the land without anyone else's consent. Furthermore, land inheritance is patrilineal and hinders women's opportunities to be titleholders in the first place.¹⁴

d) Recommendations

1. Moving forward with an ambitious Human Rights Action Plan and the Te Kakeega III Plan, it will be vital to evaluate progress towards the outlined goals. In the current Te Kakeega III plan, gender must be considered in all categories as it intersects with all other issues particularly economic development and environmental policy.
2. Although it has been discussed in national policy, gender must be added to the prohibited grounds of discrimination in the Tuvaluan Bill of Rights/ Constitution.
3. Considering that customary practices, in a narrow subset of cases, can promote gender bias, there is a need for evaluation of the role of customary law to ensure that survivors of violence are not disadvantaged. The result of this evaluation would improve access to justice for the most vulnerable.
4. The most recent comprehensive prevalence survey on gender-based violence took place in 2007, and the need for more data is clear. There is a dire need for another national prevalence survey to evaluate progress and help guide data-driven plans for eliminating gender-based violence. The Police Department also must continue to collect data on complaints, prosecutions, and convictions on domestic and sexual violence cases

¹⁴ Imrana Jalal, *Law for Pacific Women: A Legal Rights Handbook*, at 60-61 (1998).

disaggregated by sex, age, nationality, disability, and relationship between the victim and the perpetrator. Furthermore, coordination with health care facilities and women's rights organizations, who work directly with survivors, is imperative to not only gather more comprehensive data, but understand the pathway and potential barriers to accessing the courts.

5. Despite legislative progress with the Family Violence and Protection Act 2014, there are key provisions of the Penal Code that still need to be revisited.
 - a. Marital rape must be criminalized. The status quo reinforces the idea that a woman is her spouse's property and can no longer exercise consent with regard to her sexuality.
 - b. Existing legislation regarding rape and indecent assault should be replaced with sexual assault graded based on harm. This definition of sexual assault should also include penetration by objects and through other orifices.
 - c. Additionally, proving lack of consent and penetration in legal proceedings contributes to secondary victimization. Instead of the complainant being required to prove the lack of consent, legislation should require proof of coercive measures not limited to force and violence.¹⁵
6. There must be a holistic review of land legislation, specifically the Native Lands Act and Tuvalu Lands Code, to ensure no discrimination occurs in practice and to shape legislation accordingly.

II. Disability and Violence Against Women and Girls

a. Systemic Discrimination

1. The intersection between gender and disability exacerbates the problem of gender-based violence around the world. International studies suggest that women with disabilities are twice as likely to be raped or abused as the general population of women.¹⁶
2. Although there is no data specific to Tuvalu, it is clear that disabilities can create structural barriers making these women and girls more vulnerable to gender-based

¹⁵ UN Department of Economic and Social Affairs, *Handbook for Legislation on Violence Against Women*, at 26-27 (2010), <http://www.un.org/womenwatch/daw/vaw/handbook/Handbook%20for%20legislation%20on%20violence%20against%20women.pdf> accessed 27 September 2017.

¹⁶ Keran Howe, *Violence Against Women with Disabilities - An Overview of the Literature* (2000), <http://wwda.org.au/issues/viol/viol1995/keran/> accessed 18 September 2017.

violence. Societal norms and policies perpetuate attitudes about women with disabilities that make finding safety, legal resources, and justice difficult.¹⁷

3. Disabled women and girls face even more challenges with credibility in the justice system. Since cases at the Magistrate and Island Courts level are not reported on as thoroughly as those at the High Court and Court of Appeal level, it is difficult to track these dynamics in Tuvalu.

b. State Response

1. In 2013, the Tuvaluan Government acceded to the UN Convention on the Rights of Persons with Disabilities (CRPD), but has yet to ratify it. Additionally, a National Disability Policy is being drafted as a part of Te Kakeega III.¹⁸ Both of these are steps in the right direction but must be followed by implementation.
2. Substantive work on behalf of persons with disabilities has been led by the Fusi Alofa Association and the Tuvaluan Red Cross. Fusi Alofa leads the only school for students with disabilities but does not receive government funding for it.¹⁹

c. Remaining Challenges

1. Although the Constitution guarantees freedom from discrimination, disability is not currently grounds for discrimination. At present, there is no social or political framework for addressing challenges for Tuvaluans with disabilities besides informal family solidarity.
2. Fusi Alofi has noted that there are cases in Tuvalu of physical and sexual abuse of children with disabilities that go unreported.²⁰

d. Recommendations

1. The Tuvaluan Bill of Rights/ Constitution must include disability as prohibited grounds for discrimination.
2. The Tuvaluan Government should ratify UN Convention on the Rights of Persons with Disabilities (CRPD). Although reporting can put pressure on human resources, protecting

¹⁷ Keran Howe, *Violence Against Women with Disabilities - An Overview of the Literature* (2000)

¹⁸ Government of Tuvalu, Te Kakeega III Plan: National Strategy for Sustainable Development 2016 to 2020 (March 2016)

¹⁹ Pacific Disability Forum (PDF) and Australia Pacific Islands Support (APIDS), *Capacity Development for Effective and Efficient Disable Persons Organisations in Pacific Islands Countries* (March 2012), <http://www.pacificdisability.org/getattachment/Resources/Research/Final-Tuvalu-report-March-2012.pdf.aspx> accessed 18 September 2017.

²⁰ Fusi Alofi Association Tuvalu, Shadow Report on the Convention on the Rights of the Child (2013), www2.ohchr.org/english/bodies/crc/docs/ngos/FusiAlofaAssociation_Tuvalu64.doc accessed 18 September 2017

the rights of people with disabilities should be a priority, and ratification of this international convention will help ensure action and accountability in the right direction.

3. The National Disability Policy being drafted as a part of Te Kakeega III should emphasize the intersection of gender and the increased risk of violence against women and girls with disabilities.

