



# Convention on the Elimination of All Forms of Discrimination against Women

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## Committee on the Elimination of Discrimination against Women

Pre-session working group

Forty-fourth session

20 July-7 August 2009

### List of issues and questions with regard to the consideration of periodic reports

#### Tuvalu

The pre-session working group examined the combined initial and second periodic report of Tuvalu (CEDAW/C/TUV/2).

#### Legal status of the Convention

1. The report states that international conventions need to be incorporated into national law before they can be enforced through the national legal system, and that no law has yet been enacted to incorporate the Convention on the Elimination of Discrimination against Women. Please indicate whether the Government intends to introduce legislative measures to incorporate the Convention into the national legislation.

2. Please provide detailed information regarding the status, impact and application of customary law in the domestic sphere, and indicate which law prevails if there is a conflict between customary law, national law and international human rights norms, including examples of any relevant court decisions.

#### Definition of discrimination

3. The report notes that the prohibition of discrimination enshrined in section 27 (1) of the Constitution does not include discrimination on the grounds of sex, and that the High Court has also held that “under the definition of discrimination in section 27, unequal treatment because of a person’s gender is not discrimination”. As Tuvalu has ratified the Convention without any reservations, please provide the Committee with updated information on any plans to amend the Constitution in order to include a prohibition of discrimination on the grounds of sex as well as a definition of discrimination in line with article 1 of the Convention, which would cover both direct and indirect discrimination.

4. The report states that equality between men and women is not one of the fundamental rights and freedoms guaranteed in the Constitution. Section 27 (3) (d) of the Constitution allows discrimination in the areas of adoption, marriage, divorce, burial and land, among others (para. 1.2). Are an amendment of the Constitution and a repeal of section 27 (3) (d) envisaged? Please provide the Committee with updated information on any plans to embody the principle of equality of women and men in the Constitution or in other appropriate legislation in line with article 2, paragraph (a), of the Convention.

#### **Discriminatory laws and practices**

5. The report refers to a number of laws that contain direct or indirect discriminatory provisions against women, such as the Native Lands Act, the Marriage Act, the Tuvalu Lands Code, the Falekaupule Act of 1997 and the Employment Act of 1966. Furthermore, the report indicates that some traditional practices and customs further result in discrimination against women. Kindly provide detailed information on the measures envisaged by the Government to amend or repeal such provisions and to abolish or modify such customs and practices through legislation or other programmes, in line with article 2 (f) of the Convention.

#### **Visibility of the Convention**

6. The report recognizes the importance of strengthening and building the capacity of the judiciary, especially in the lower courts, on gender and human rights issues, and notes that strengthening the judiciary has been a priority of the Government for some years (para. 1.3). Please provide detailed information on training programmes, if any, in place or planned for judges, magistrates, lawyers and law enforcement officers on the Convention.

#### **Plans of action**

7. The report refers to the Revised Tuvalu National Women's Policy of 2006 and to the Corporate Plan 2007-2009, through which the policy will be implemented (paras. 40 and 42). Please elaborate on the concrete measures taken to implement the plans, their expected results and results already achieved, reflecting, in particular, the quarterly progress reports on the implementation of the Plans submitted by the Department of Women's Affairs to the Cabinet. Please also provide information on the financial and human resources made available for the implementation of the policy.

#### **Temporary special measures**

8. In the report, it is acknowledged that there are several areas where the adoption of temporary special measures by the Government would be needed to accelerate the establishment of equality between men and women. Despite the provision of section 27 (3) (f) of the Constitution which allows the adoption of temporary special measures, the Government has not yet adopted any such measures since the ratification of the Convention (para. 4.2). Please provide information regarding whether the Government has plans to adopt temporary special measures to accelerate de facto equality between men and women in line with article 4, paragraph 1, of the Convention and general recommendation No. 25.

**Stereotypes and cultural practices**

9. Throughout the report, reference is made to deep-rooted traditional and customary social patterns, attitudes and stereotypical norms that contribute to gender discrimination and maintain stereotypical images of the role of women in the society. Please elaborate on the gender-sensitivity training and CEDAW awareness-raising programmes run by the Government in the capital Funafuti as well in the Outer Islands. Please also indicate what concrete measures have been taken or planned to modify or change such cultural patterns of conduct of men and women in line with article 5 (a) of the Convention, as well as any progress achieved in their implementation.

**Violence against women**

10. The report notes that violence against women is common, but is often not reported because it is usually perceived by both the general public and the police as a private family matter (para. 5.12). Please provide further information on any specific plans or action that the Government may be considering to sensitize the police, the judiciary and the general public on the issue of violence against women. Please also provide information regarding any specific measures taken to encourage women to report violence committed against them, and elaborate on the “no drop” policy developed by the police and its impact (para. 1.4).

11. Please clarify whether domestic violence is expressly prohibited by law. If that is not the case, please provide information on legislative provisions under which violence against women is currently prosecuted and punished, and indicate whether there are any plans to adopt specific legislation on domestic violence and criminalize all acts of violence against women, including marital rape and sexual harassment.

12. The report states that under section 156 (5) of the Penal Code, any female person of or above the age of 15 years who permits her grandfather, father, brother or son to have sexual intercourse with her shall be guilty of a felony (para. 2.11). Please indicate whether that section has been applied by the court and with what effect. Please also indicate whether any measures have been taken or envisaged to repeal that provision in order not to consider such women, in particular underage women, as criminal offenders.

**Exploitation of prostitution**

13. The report states that “girls and young women who indulge in sexual promiscuity are likely to face ‘disciplinary’ action in the form of physical abuse from brothers, male cousins and even parents” (para. 6.5). Please indicate how widespread that practice is and how the law enforcement authorities address such physical abuse perpetrated against girls and young women. The report also states that prostitution is not evidently seen in Tuvalu and is not considered a problem because there are no official reports on the issue (para. 6.5), but further indicates that with the increasing travel and transnational labour mobility, as well as the increasing number of sexually transmitted diseases, there may be a possibility that informal prostitution is present in the country. Please indicate whether there are any plans to carry out research on the exploitation of prostitution in Tuvalu and on the situation of women engaged in prostitution. What efforts are being undertaken to promote changes in the prevailing attitude towards women and girls in prostitution?

**Political participation and participation in public life**

14. The report recognizes that stereotypical traditional roles of men and women affect their involvement in formal decision-making processes, including political participation. Please provide more information on the “Women in politics” programmes and any other measures taken or envisaged to promote women’s participation in political and public decision-making positions, including in the civil service, public administration and membership in public councils and boards, including those aimed at empowering women themselves (paras. 4.4 and 4.5).

15. Throughout the report, reference is made to the fact that the absence of women from the Falekaupule meetings prevents them from participating fully in decision-making processes at the local level. Please indicate what measures, if any, have been taken to advance women’s participation in Falekaupule meetings and their representation in the Island Kaupule and to promote changes in the general attitude discouraging women from participating in those meetings and standing for election to Island Kaupules, including measures aimed at promoting women’s awareness of such opportunities.

16. Taking into account the Committee’s general recommendation No. 23 on women in political and public life, please indicate whether the Government intends to issue directives, establish quotas or take any other specific measures to increase the representation of women at senior levels of Government, in the judiciary and in international institutions (paras. 8.4 and 11.8).

**Education**

17. Please elaborate on the steps taken or considered to modify gender stereotyping through gender-sensitive school curricula and to encourage women to pursue tertiary education and choose non-traditional fields of study (paras. 10.29 and 10.30).

18. The report points out that by law, both girls and boys enjoy the same access to primary and secondary school (paras. 10.4 and 10.14). Please provide updated information on the percentage of girls of school age, in both the capital and the Outer Islands, who are enrolled in primary and secondary school.

**Employment**

19. The report states that vertical segregation of women and men is prevalent in the labour market, with women dominating in clerical and related work (paras. 11.6 and 11.8). Please provide information on any measures taken or envisaged to address vertical segregation in the labour market, both in the public and private employment sectors, and to facilitate the access of women with higher education to work and salary levels corresponding to their qualifications.

20. The report notes that the opportunity offered to women through the Women’s Home Benefit Scheme may, in reality, push women to resign from their work and use their pension savings to meet their family’s immediate financial needs, at the expense of their work and pension benefits in the long run (para. 11.14). Please provide information on any measures aimed at discouraging such a practice. Kindly also indicate whether any pension or retirement benefits are available for women working in the informal sector.

**Health**

21. The report indicates a decrease in the use of contraceptives and an increase in the overall number of teenage pregnancies and sexually transmitted infections. Furthermore, the report notes that young people living in the Outer Islands have less access to sexual health information than do those living in the capital. Please elaborate on measures taken or envisaged to ensure access by women and adolescent girls to reproductive and sexual health education programmes and services, as well as to safe and reliable contraceptive methods (paras. 12.10, 12.11, 12.17 and 12.18). Please also indicate whether any cultural attitudes in regard to gender prevent women and adolescent girls from refusing sex or from insisting on safe and responsible sex practices, and what measures have been taken to promote changes in those attitudes.

22. According to the report, abortion is a criminal offence in Tuvalu, but there are some situations in which the court would accept an adequate defence for a charge of abortion, for example, if it was necessary to preserve the health of the mother (para. 12.12). Please provide information on how many women have had recourse to abortion in the last four years, any court proceedings initiated against women or health-care personnel on the basis of charges of illegal abortion and their outcome. Please also elaborate on any plans to amend legislation to remove punitive provisions imposed on women who undergo abortion, in line with the Committee's general recommendation No. 24, on women and health.

**Economic and social benefits**

23. The statistics attached to the report show that a great majority of loans approved by the Development Bank of Tuvalu were granted to men, and that the loans granted to women were generally smaller than those granted to men (para. 13.8). Please provide information on any strategies aimed at promoting de facto access by women to the financial assistance through that bank.

24. According to the report, there is concern that women are more vulnerable to poverty owing to their traditional roles in the society (para. 13.11). Please provide information on strategies the Government may be contemplating to address the problem.

**Rural women**

25. The report states that women lack knowledge about the Falekaupule Trust Fund and about how it could be used for their development (para. 14.11). Please provide information on Government strategies to enhance women's participation in the elaboration and implementation of island development planning, in particular through the Fund.

26. The report notes that there is a need to develop the skills and knowledge of women in the Outer Islands in order to enable them to start microbusinesses. The report also notes that only a few women participated in the training projects referred to in para. 14.3, and that it was apparently owing to the fact that the needs of women had not been taken into account in the planning and implementation of the projects. Please indicate whether any other such training projects have been implemented, what steps have been taken to enhance women's participation in those projects, and what their impact has been on the empowerment of rural women (paras. 14.3 and 14.10).

**Law**

27. The report indicates that landownership in Tuvalu is based on a communal family grouping called the *Kaitasi*, and that, as a rule, land is inherited through the male lineage. The report further states that it has been suggested that men and women would have equal rights to *Kaitasi* land (paras. 9 and 10, pp. 10 and 11). Please provide information on what measures have been taken to implement that suggestion.

**Family relations**

28. The report reveals some discriminatory provisions in the Custody of Children Act and the Native Lands Act regarding custody of children aged two and above who are born out of wedlock, whereby the father has an automatic right to custody if he accepts paternity. Please provide information on measures envisaged by the Government to repeal or amend those provisions so that the same rights would be granted to both women and men with regard to custody of children.

29. According to the report, the dissolution of a marriage leaves women and children in a vulnerable situation, particularly if the husband's earnings were the primary source of income for the family. The report also states that since 2002, no case regarding enforcement of maintenance support has been registered, although the possibility exists (paras. 16.11 and 16.12). Please provide information on the rules regarding enforcement of maintenance and on any measures taken or envisaged to provide information to women about that possibility. Please also provide information on any gender differences in the economic consequences of dissolution of marriage and indicate whether any specific measures have been taken or envisaged to improve the situation of women in a case of dissolution of marriage.

**Optional protocol and amendment to article 20, paragraph 1, of the Convention**

30. Please indicate any progress made with respect to accession to the Optional Protocol to the Convention. Please also describe progress towards acceptance of the amendment to article 20, paragraph 1, of the Convention.

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