Child Rights References in the Universal Periodic Review

Summary:
A compilation of extracts featuring child-rights issues from the reports submitted to the first Universal Periodic Review. There are extracts from the 'National Report', the 'Compilation of UN Information' and the 'Summary of Stakeholder's Information'. Also included is the 'Final Report' and 'Conclusions and Recommendations' from the Review.

Tuvalu – 3rd Session – 2008
DATE OF REVIEW: 11 December - 14.30 p.m. to 17.30 p.m.

National Report

35. There are also examples of domestic legislation which operate human rights in a specific field. The Education Ordinance, for instance, provide pupils with the right not to take part in religious education or ceremonies (section 19) at a public school. The Criminal Procedure Code sets our various protections against arbitrary arrest and intrusion into one’s private home. The Native Land Code (essentially a codification of customary land laws) provides individuals with the right to not arbitrarily deprived of their family land inheritance.

38. The Educational (Compulsory Education) Order 1984 stipulates in its section 3 (1) that a child who is of school age, being the period (a) commencing at the beginning of the school year during which he or she reaches the age of (seven) years; and (b) ending at the end of the school year during which he or she reaches the age of fifteen years.

39. Section 3 (1) (a) of the Compulsory Order 1984 had been amended and now reads “commencing at the beginning of the school year during which he or she reaches the age of six years.” Education is therefore compulsory for all children aged 6 to 15 years old.

41. Youth groups are running their own programmes and workshops on human rights as most of the young generation do not understand their rights and overall, the concept of human rights.

44. Tuvaluans live in very close communities and in extended families. There have been no cases reported of children being neglected but there are rumours that some children are staying with relatives as a result of being neglected by their mothers and guardians. Government believes strongly in the need to properly harmonise customary ways of upbringing children in conformity with the CRC and other human rights covenants.

45. Child sex offences are not adequately provided for in the Penal Code, particularly in the case of abuse of male children. Rape of a male child, for example, carries a significantly lesser maximum penalty than rape of a female child. Fortunately, such offences are a relatively rare occurrence in Tuvalu. However, law reform is clearly required in order to modernize Tuvalu’s criminal laws in this area.

59. The development of a youth corporate plan and youth internship programme are under review and in progress. Conducting awareness workshops on the threat posed by HIV/AIDS are being carried out with the assistance of Tuvalu Family Health Association (TuFHA).

62. The existing curriculum has been reviewed and developed framework for Early Childhood Education, Primary, Junior Secondary School, Secondary and Post-Secondary.

63. A national strategy on school based system of student assessment has been developed.

67. Health and social welfare, including issues of nutrition, youth, gender, age and other special needs; good health and ensuring that the social and welfare needs of the various sections of society are catered for will help to ensure a stable social environment; HIV/AIDS, NCDs and hardship and poverty are emerging issues and need to be considered as potential threats to the achievement of the Vision.

UN Compilation
16. The UNFPA Office for the Pacific informs that access to basic health services is virtually universal. Tuvalu has an excellent record of meeting the basic health needs of its people. The WHO Regional Office for Western Pacific informs that health services are working to meet the new demands of the changing lifestyles (especially regarding diet) of the population. There is one hospital, located on the main island of Funafuti, whereas the outer islands have clinics staffed by trained nurses. The WHO Regional Office for Western Pacific also states that there is a limited supply of fresh (rain) water on these atoll islands, which means that there is a risk of spread of communicable diseases through drinking water. Groundwater is brackish and is not generally considered safe for consumption. The leading causes of morbidity and mortality are communicable diseases, even if no outbreaks of infectious diseases have been reported in recent years. However, non-communicable diseases, such as obesity, heart disease and diabetes, are a growing concern. The infant mortality rate is high, at 21.6 per 1,000 live births.

19. The UNFPA office for the Pacific informs that access to formal education in Tuvalu is virtually universal. The 2003-2007 UNDAF informed that about 95 per cent of Tuvaluans, male and female alike, are literate. Since 1988, Tuvalu’s national educational policy has been the “Education for Life” programme, emphasising compulsory, high-quality education for all through to the age of 15, strong community and parental participation, and equal access to schools throughout the country. All children have access to schooling and there appears to be broad gender equality in enrolment through secondary school, although with lower female rates of completion, and 45 per cent of all overseas tertiary scholarships since 1991 have gone to women. In recent years, there has been an increase in the number of children participating in early childhood education and a higher percentage of formally qualified pre-school teachers.

Stakeholder Compilation

3. The TBC also indicated that international treaties ratified by Tuvalu are not automatically incorporated into domestic law and that where domestic laws are inconsistent with Tuvalu’s international obligations, the High Court has indicated that the domestic law will apply unless and until Tuvalu has amended the law to reflect its international obligations, through the usual parliamentary procedures. It added that, however, where the construction of a written law is open to more than one interpretation, an interpretation which is consistent with Tuvalu’s international obligations will be preferred. The LLP called on the Government of Tuvalu, as a matter of urgent priority, to incorporate CEDAW and CRC into its national laws.

5. The LLP believed that reporting under international instruments is an integral national and international accountability mechanism. It noted with concern the delay in the Government of Tuvalu submitting its CEDAW and CRC Initial Reports and indicated that on 2 July 2008, the CEDAW Initial Report was sent to the OHCHR office in Suva, while the CRC Initial Report is yet to be submitted. The Global Initiative to End All Corporal Punishment of Children (GIEACP) reported the same information about the CRC15. The LLP called on the Government of Tuvalu, as a matter of urgent priority, to submit its CRC Initial Report no later than June 2009.

10. The GIEACP noted that corporal punishment is lawful in the home and that cruelty to children is addressed in article 226 of the Penal Code, but which also states that “nothing in this section shall be construed as affecting the right of any parent, teacher, or other person, having the lawful control of a child or young person to administer reasonable punishment to him”. The GIEACP added that corporal punishment is lawful in schools under article 226 of the Penal Code; that in the penal system, corporal punishment is unlawful as a sentence for crime but it is not explicitly prohibited as a disciplinary measure in penal institutions; and that corporal punishment is lawful in alternative care settings under article 226 of the Penal Code.

27. For AI, the Passports Bill, tabled in Parliament in May 2008, seeks to discontinue the investor immigrant passport scheme, but does not include any remedial measures to address the situation of stateless persons and those disadvantaged by the scheme. It considered that the existence of stateless persons in Tuvalu, and the practical obstacles for such persons in obtaining citizenship by naturalisation, are a violation of international human rights standards and must be addressed by the Government as a matter of priority. AI recommended that the Government amend the relevant laws to provide remedies for stateless persons, including children, and for those who have been adversely affected by the Passport scheme of 1999.

Final Report

11. Tuvalu reported that the State report had been submitted to the Committee on the Elimination of Discrimination against Women and that the report for the Committee on the Rights of the Child was in its final stages. Recommendations by both Committees have already been or are being implemented, inter alia, through the educational master plan of action and the women policy.

16. In Tuvalu, education is free and compulsory for primary school up to year 8, and there are provisions for free health care and language rights.

24. Turkey stated that the three basic documents of the review demonstrated that the overall performance of Tuvalu in the field of human rights is positive. It understood that capacity-building and technical assistance are fundamental requirements for further progress. It noted that legislative reform on the punishment of sexual abuse of children, land and family laws appear to be the main priorities, and believed that the State’s intention to establish a national human rights commission and a human rights office is remarkable.
4. Meet its reporting obligations under the Convention on the Rights of the Child (United Kingdom);

27. Italy stated that the review process is a useful opportunity for Tuvalu to directly experience the functioning of the international human rights system. It noted from the compilation report prepared by OHCHR that, in some parts of the territory, there are limitations to freedom of religion and worship. Italy was interested in learning what measures the Government intends to take to ensure that all religious groups receive equitable treatment, in particular with regard to access to State-owned information media, which play a fundamental role in reaching people living on the outer islands. Italy recommended the accession of Tuvalu to the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights. Italy also recommended that Tuvalu incorporate fully into its legislation the provisions of the Convention on the Rights of the Child to enhance the protection of children’s rights in the country.

30. Japan applauded Tuvalu for its efforts to protect the rights to education and access to health care, ratification of the Convention on the Rights of the Child and the Convention on the Elimination of All Forms of Discrimination against Women, and many international human rights commitments, including the Beijing Platform of Action. Japan noted that Tuvalu had not yet ratified several major human rights treaties, including the International Covenant on Civil and Political Rights, the International Covenant on Economic, Social and Cultural Rights, the Convention against Torture and the International Convention on the Elimination of All Forms of Racial Discrimination. Japan hoped that Tuvalu would ratify these treaties expeditiously and recommended that it make good use of technical assistance from OHCHR to do so. It welcomed the State’s submission of its initial report to the Committee on the Elimination of Discrimination against Women and its efforts to guarantee the provisions of the governing Convention with corresponding domestic legislation. Japan asked for more information about measures in place to improve the human rights situation of women and eliminate existing discrimination. Regarding human rights education, especially on educational activities to promote freedom of religion and expression on the outer islands and capacity-building for police officers, Japan asked about measures taken as well as what efforts were planned for the future.

43. The United Kingdom recognized the capacity constraints that Tuvalu faced and applauded the efforts made despite them. It recommended that Tuvalu continue to work with civil society in the follow-up to the review, and welcomed the answers to the advance questions, including on the impact of climate change on the human rights of the citizens of Tuvalu. Mindful of the constraints faced, the United Kingdom would welcome further efforts by the Government to implement rights and obligations under the Convention on the Elimination of All Forms of Discrimination against Women and the Convention on the Rights of the Child. It expressed concern that Tuvalu had yet to report as required to the Committee on the Rights of the Child. It also strongly encouraged Tuvalu to meet its reporting obligations and would be keen to investigate ways that the United Kingdom could support the work of UNICEF and Tuvalu to fully implement the Convention on the Rights of the Child. The United Kingdom noted the qualifications concerning customary law and limitations under the Bill of Rights aimed at limiting practice which are “divisive, unsettling or offensive to the people”, or directly threaten “Tuvaluan values and culture”. While the limitations are further clarified by the Constitution, actions must be “reasonable and justifiable within a democratic society”; there are still forms of discrimination against women in family law and restrictions on freedom of religion, belief and expression in Tuvalu. It welcomed the explanation of the work under way to review the law in this area and encouraged Tuvalu in its efforts to correct this. The United Kingdom recommended that Tuvalu prioritize reforms to modernize legislation and eliminate all forms of discrimination.

45 Zambia expressed its support and encouragement while noting that Tuvalu has a long way to go before it meets some of its national and international obligations in the area of human rights. It noted that Tuvalu is not a party to the two major treaties, the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights. The two treaties that have been ratified, the Convention on the Elimination of All Forms of Discrimination against Women and the Convention on the Rights of the Child, had not yet been domesticated into national law. It noted with interest and as remarkable achievements the life expectancy at birth of 67 years, the adult literacy rate of 95 per cent and that there are free health services and compulsory free education for children from 7 to 14 years. Zambia recommended that the State call on the international community to offer very much needed technician.

48. Brazil welcomed the important concrete steps taken in relation to the State’s accession to the Convention on the Elimination of All Forms of Discrimination against Women and the submission of its first report in June 2008. Brazil specifically noted the State’s recognition of the importance of setting up, as early as possible, a national commission for human rights and a human rights office in the country, and called on the international community to consider technical assistance and financial support in building such institutions as well as in providing human rights education programmes and awareness-raising activities. In the spirit of the upcoming Review Conference on racism, racial discrimination, xenophobia and related intolerance, Brazil recommended that the Government keep working with OHCHR on this theme as they enter the final phase of the preparatory process for the Conference. Brazil recommended that the Government work towards accomplishing the human rights goals set by the Council in its resolution 9/12 and also towards strengthening its public policy to guarantee the rights of the child, with special attention to children without parental care. In recognizing the efforts made by Tuvalu, Brazil recommended the ratification of human rights treaties to which Tuvalu is not yet a party. Regarding access to justice, Brazil noted that since the only High Court is physically located in the capital, it is expensive for parties and witnesses residing in other islands to attend the hearing of their cases. It asked what measures are taken to make the High Court more accessible to the people of Tuvalu.

Conclusions and Recommendations
4. Meet its reporting obligations under the Convention on the Rights of the Child (United Kingdom);
68. The following recommendations will be examined by Tuvalu, which will provide responses in due time. The response of Tuvalu to these recommendations will be included in the outcome report to be adopted by the Council at its tenth session:

1. Work towards reaching the human rights goals set by the Council in its resolution 9/12 and to strengthening its public policy guaranteeing the rights of the child, with special attention to children without parental care (Brazil);

2. Incorporate fully in its legislation the provisions of the Convention on the Rights of the Child to enhance the protection of children’s rights (Italy);