

STATE PARTY EXAMINATION OF TUVALU'S INITIAL REPORT

64TH SESSION OF THE COMMITTEE ON THE RIGHTS OF THE CHILD

16 SEPTEMBER – 4 OCTOBER 2013

Contents

Opening Comments	1
General Measures of Implementation	2
Definition of the Child	2
General Principles	2
Civil Rights and Freedoms.....	3
Family Environment and Alternative Care.....	4
Education, Leisure and Cultural Activities.....	6
Special Protection Measures	6
Concluding Remarks	7

Tuvalu ratified the Convention on the Rights of the Child (CRC) on 22 September 1995. On 20 September 2013, the Committee on the Rights of the Child (the Committee) examined the initial report of Tuvalu.

Opening Comments

The delegation of Tuvalu was led by Ms Esealota Apinelu, Minister of Education.

Ms Apinelu explained that since the ratification of the CRC in 1995 the State Party had faced important challenges in implementing the CRC due to the small dimension and distance of the nine islands composing the country. In particular, the lack of human and financial resources had represented a veritable obstacle: there were only nine lawyers in the country and the eight Ministries were understaffed. In regard to the rights of the child, the National Advisory Committee for Children was charged of the implementation of the CRC.

Ms Apinelu highlighted the crucial role played by cultural and traditional values in the country. The respect for the elderly, community life, harmony and peace were the cornerstones of the cultural identity of the country. She declared that the Constitution and many other important laws in the fields of education and health were currently under revision.

The Country Rapporteur, Ms Hiranthi Wijemanne, commended the establishment of the National Advisory Committee for Children and raised some important issues, including the importance of having a National Plan of Action for the implementation of the CRC, the need to clearly define legal age of majority in the legislative framework and the issue of establishing an effective data collection system.

The Country Co-Rapporteur, Ms Renate Winter, expressed solidarity for the challenges faced by the State in terms of climate changes. She highlighted the importance of inserting gender in the non-discrimination clause contained in the Constitution.

General Measures of Implementation

Legislation

The Committee asked whether domestic law was prevalent over international law in case of conflict. The delegation recognised the prevalence of domestic law and declared that this issue needed to be corrected. However, the delegation assured the Committee that the State Party's laws and Constitution were currently under review.

The Committee expressed concern about the possibility that human rights, including rights of the child, could be restricted when in conflict with cultural and traditional values of the State. In this regard, the Committee highlighted that the UN legislation stated that cultural values had to be respected unless they run counter to human rights issues.

Coordination and monitoring

The Committee asked the delegation whether the National Committee for the implementation of the CRC had been set up and whether there was a National Plan of Action on the rights of the child. The delegation answered that although there was not an independent mechanism the State Party had set up the National Advisory Committee for Children as part of the Ministry of Education. Its composition included key stakeholders from the National Council of Women and from other governmental bodies. Regarding the National Plan of Action, the delegation explained that education had been incorporated into the National Strategic Plan of the State Party.

Dissemination and training

The Committee asked the delegation for more details about dissemination and perception of the CRC in the society, especially among children. The delegation answered that courses on the CRC had been incorporated in the national school curriculum. In collaboration with UNESCO, the State Party had organised two conferences to discuss with children on the rights of the CRC. Several awareness programmes had been promoted by the State Party.

Data collection

The Committee inquired whether the State Party had an organised data collection system and whether there were disaggregated data on the condition of children under five and under eight years old. The delegation acknowledged that the absence of a coherent data collection system was a serious challenge for the State. However, concerning education, a data collection system was part of the Tuvalu Education Strategy Plan II implemented in the period between 2011 and 2015.

Role of the civil society

The Committee asked whether civil society organisations, including the child-related organisations, had been consulted in the preparation of the Report for the State Party.

Definition of the Child

The Committee expressed concern about incoherencies on the age of majority among different legislative provisions. Moreover, the Constitution did not provide a clear definition of the age of majority. The delegation recognised this incoherence and assured the Committee that the State had taken this issue in consideration in the review of the Constitution.

General Principles

Non-discrimination

The Committee was concerned about the absence of a clear prohibition of gender and sex discrimination in the Constitution of the State Party. Furthermore, the Committee expressed concern about gender discrimination in the legislation concerning sexual abuses. The Committee highlighted that rape cases were punished differently depending on the sex of the victim. The delegation recognised that the Constitution needed to be amended and assured the Committee that the State had taken into account the recommendation of inserting a direct reference to gender discrimination. However, the delegation highlighted that there was no discrimination in enforcement of laws, especially in sectors as health and education.

Best interest of the child

The Committee asked the delegation whether the best interest of the child was taken into consideration both in legislating and by the Court in judicial proceedings affecting children. The delegation explained that many domestic laws dated back to the colonial period and that their revision was a priority for the State Party. The delegation assured the Committee that the best interest of the child had always been taken into consideration in enforcing law. In case of children born outside the wedlock, the child was not automatically given to the father, as expected by law, but to the parent able to provide economic security to the child.

Respect for the views of the child

The Committee asked whether the views of the child were taken into account in school setting, especially in decision-making process. Furthermore, the Committee was concerned that their views were not properly considered in traditional settings, such as family and local community. The delegation clarified that the views of children were greatly taken into consideration, especially in regard to educational system: they had been consulted in developing the national curriculum and in establishing all strategic plans for school.

Concerning the participation of children in tradition settings, the delegation acknowledged that the State faced cultural challenges. In this regard, several awareness programmes addressed to teachers and parents had been run and communities had demonstrated to be more tolerant towards children's participation.

Civil Rights and Freedoms

Birth Registration

The Committee recognised that the lack of human resources had been an obstacle in setting up an effective national birth registration system, but asked the delegation what measures had been taken in order to increase the level of birth registered, especially in the outer islands. The delegation admitted that birth registration was a serious challenge across all the country not only in the outer islands. The delegation highlighted that the root cause was the lack of awareness and that the State Party had conducted some awareness programmes addressed to parents, personnel of registration offices and medical personnel. Furthermore, the State would modernise the birth registration system in order to make it more accessible and effective.

Freedom of thought, conscience and religion

The Committee expressed concern with regards to the Religious Organisations Restriction Act (No 7/2010) and asked the delegation what measures could be taken to reduce the negative consequences on the freedom of religion. Furthermore, the Committee asked whether students were forced to participate to religious services, regardless their own religious beliefs. In particular, the complaints reported by parents of some students enrolled at Motufoua School had not received any answer by the Government.

Concerning the Religious Organisations Restriction Act, the delegation stated that the context of law had to be understood. The intent of the legislator had been to regulate and limit the

power of the chiefs of islands which before the law had absolute control on religions practiced inside their island. With reference to the freedom of religion at school, the delegation affirmed that the Section 90 of the Education Act (No 22/77) allowed parents to excuse their children to attend religious class and that information about children being forced to participate in religious activities were not correct. However, the delegation highlighted that in the past schools were managed by the Congregational Christian Church of Tuvalu. In order to transform them in governmental schools, the government assured the Church to maintain some mandatory religious practices such as morning devotion.

The Committee highlighted that even morning devotion had to be considered as worship.

Corporal Punishment

The Committee asked whether the legislation of the State Party authorised use of corporal punishment and what measures had been taken to limit this practice in different settings, such as school, family as well as in case of children in conflict with the law. In this regard, the delegation explained that the State faced a serious cultural challenge since the admission of corporal punishment as a way to discipline children was deeply embedded in the culture of the State Party. According to law, the head teacher was the only person at school who could administer corporal punishment to students. The delegation assured the Committee that the State had conducted several awareness programmes on alternative methods of discipline addressed to parents, teachers and communities. Furthermore, the State had considered amending the Education Act using a human rights-based approach.

Family Environment and Alternative Care

Abuse and neglect

The Committee asked what measures had been taken to prevent parents from neglecting children. The delegation stated that according to the Penal Code (No. 34/69) parents neglecting children could be penally pursued. Despite such provision, the police forces applied a flexible approach warning parents about their penal responsibility. Such approach was aimed at avoiding a harmful separation of the child from their parents. Furthermore, the delegation explained that several awareness campaigns addressed to parents had been carried out.

Regarding prevention of neglect's cases, the Committee asked whether there were measures to support parents during working hours. The delegation stated that children were neglected after working hours, especially during the night, while working parents were supported by relatives since the society of the State Party was family oriented and based on extended family structure.

Separation from parents

The Committee expressed concern about the legal provision contained in the Native Lands Act (No. 2/98) allowing fathers of children born outside the wedlock to take their child when the child has reached the age of 2 years. Furthermore, the Committee asked whether the State had taken some measures to address cases of separation from parents of children of migrant parents. The delegation explained that children born outside the wedlock were not automatically given to the father but that their best interest was the primary factor taken into account by the Court. Concerning the issue of children of migrant parents, the delegation acknowledged the absence of specific legal provisions.

Basic Health and Welfare

Child mortality

The Committee inquired what measures had been taken to decrease the high rate of child mortality. The delegation answered that this important issue was addressed by the Health Department which worked in tight collaboration with the Education department.

Breastfeeding

The Committee asked for more details about policies or other measures to increase the number of mothers practising exclusive breastfeeding. The delegation explained that the State Party totally supported the recommendation of the World Health Organisation (WHO) on exclusive breastfeeding and that it had conducted several awareness campaigns, including weekly radio programmes. Furthermore, the medical personnel recommended such practice to pregnant teenagers and women on occasion of the clinic visits.

Health services

The Committee observed that many children had been transferred overseas to receive health treatments and asked why the State did not readdress the budget allocated for these expensive transportations to the improvement of in county health facilities and infrastructures. The delegation recognised that 40 percent of health budget was spent on overseas transportations, especially towards countries such as New Zealand and India. The delegation explained that this practice was needed given the lack of health facilities and medical personnel in the State Party.

Adolescent health services

The Committee highlighted two main concerns affecting health of older children: the widespread issue of obesity and the issue of early sexual activity. Regarding the first issue, the Committee asked whether there were companies promoting junk or instant food in the State Party. The delegation answered that there were no companies promoting unhealthy foods. Concerning reproductive health, the delegation affirmed that the State had implemented the Family Life Education Program in collaboration with the United Nation Population Fund (UNFPA). Furthermore, the Ministry of Health had promoted free distribution of condoms.

Children with disabilities

The Committee was concerned about the lack of legal protection and integration measures for children with disabilities. Regarding the legislative framework, the delegation stated that the ratification of the Convention on the Rights of Persons with Disabilities (CRPD) had been taken into consideration by the State. However, the delegation explained that the actual challenge would concern the implementation of the CRP, especially in terms of transportation facilities. In regard to education, civil society organisations and particularly Fusi Alofa had played a crucial role in providing education to children with disabilities.

The Committee highlighted that children with disabilities were marginalised in first place by law since the Education Act stated that education was not compulsory for children with disabilities. The delegation explained that the Education Act had been promulgated in 1978 and that such provision was aimed at helping parents of children with disabilities that could not bring their children to school due to the lack of adequate facilities. However, the State would promote training sessions for teachers and provide disabled-friendly infrastructures and services.

Alcohol abuse

The Committee asked for more information about measures taken to contrast the consumption of alcohol since 40 percent of teenagers were known to consume alcohol despite the legal prohibition. The delegation stated that the Alcoholic Drink Act (No 58/84)

prohibited the sale and consumption of alcohol to children under 18. The sale of tobacco to children under 18 was banned by the Tobacco Control Act (No.8/08).

Education, Leisure and Cultural Activities

School enrolment and completion

The Committee expressed concern about difficulties of school pupils to pass the national "year eight" examination which would allow them to enter secondary school. Less than half of students were qualified to continue their studies at secondary level. The delegation assured the Committee that this serious issue was a priority in the State Party's agenda but admitted that the lack of human and financial resources had seriously compromised the implementation of national plans and strategies. However, a project funded by UNICEF and the Government of Australia aimed at achieving education for all had been implemented.

Gender equality in education

The Committee was concerned about gender inequality in education since fewer girls than boys had completed their education. The delegation answered that there was no gender inequality in this respect because both girls and boys were required to attend primary school until the age of 8 years.

Special Protection Measures

Juvenile justice

The Committee asked clarification about the practice according to which children in conflict with law were taken into custody by police instead of going in front of the Court. The Committee asked about the legal age of criminal responsibility and whether punitive or restorative measures were adopted to address these cases. The delegation clarified that only the most serious cases appeared in front of the Court, while for minor infractions children were taken into custody by police which informed their parents.

Regarding the legal age of criminal responsibility, the delegation acknowledged that there was no a clear legal definition. In this regard, the Committee asked whether, since there was no an age limitation in legislation, even under ten years old children could be taken into custody by police. The delegation explained that infractions committed at school by under ten years old children were punished according to school regulation, whereas outside school the head of family was responsible for provide the appropriate disciplinary measure.

Lifelong sentence

The Committee was deeply concerned about a child condemned to lifelong sentence and asked whether the sentence could be changed. The delegation explained that the government would amend the Penal Code replacing the lifelong penalty with a 15-years minimum sentence for serious crimes. The delegation stated that the State was considering changing the lifelong sentence involving the child.

Children in situations of emergency

The Committee recognised that the State was facing tremendous challenges in terms of climate changes and asked whether there were measures and mechanisms to involve children in disaster preparedness programmes. The delegation confirmed that disasters caused by climate changes represented a crucial issue which greatly affected the entire population including children. Project plans on disaster preparedness were implemented in every school and inserted in the national curriculum. However, further efforts needed to be made and the collaboration with international partners was crucial in this context.

Sexual exploitation and sexual abuse

The Committee inquired the delegation whether the legislation did not cover cases of rape of boy and whether rape of women and men was punished in a different way. Furthermore, the Committee expressed deep concern about the legal provision included in the Penal Code which considered a girl victim of incest older than 15 years old as responsible for the crime, unless she did not demonstrate to the Court proves of resistance to the crime. The delegation assured the Committee that the Family Protection Bill was under revision to include the issue of rape of boys.

The delegation highlighted that the number of sexual abuses was low because of the lack in reporting since often girls felt ashamed. In this regard, the Committee declared that mechanisms to ensure confidentiality were a priority given the small dimension of their society. The Committee suggested the creation of the "teacher of trust" to which girls could address without arouse suspicions.

Concluding Remarks

Ms Hiranthi Wijemanne thanked the delegation for the positive and productive dialogue with the Committee. She declared that the Committee fully understood the serious challenges faced by the State in terms of climate changes. She welcomed the significant efforts and progress made by the State despite these challenges.

Ms Esealota Apinelu thanked UNICEF for facilitating the dialogue with the Committee. She highlighted that the best interest of the child was the key principle taken into account by the State in legislating and implementing its national strategies. However, the small size of the State Party made the international assistance necessary in the implementation of the CRC. Furthermore, she declared that the climate changes needed to be addressed urgently to allow people of Tuvalu to live in peace of mind and free of fear.