

TUVALU

Third Session of the Universal Periodic Review Working Group, December 2008

Submission of the Tuvalu Brethren Church

Introduction

1. The Tuvalu Brethren Church (“TBC”) is a registered religious organisation in Tuvalu. The fundamental theology of the TBC is based around Christian principles and the teachings of the Old and New Testaments. We believe in one God, eternally existing in three Persons: Father, Son and Holy Spirit. The TBC is to be distinguished from the ‘Exclusive Brethren,’ a separate denomination that does not currently have any activities within Tuvalu.
2. This report is the TBC’s submission to the United Nations Human Rights Council, for consideration as a civil society report within the Universal Periodic Review mechanism. It has been prepared independently by members of the TBC. In this submission, the TBC intends to provide factual information and a summary of its concerns in relation to religious freedom and freedom of belief, association and expression in Tuvalu. Recommendations to Government relating to these areas of concern are listed in the final section of this report.

Background

3. Mase Teonea, the TBC’s spiritual leader, first visited the islands of Tuvalu by yacht on the Dayspring III to preach and distribute hymn books in 1981. Mase Teonea spent four months on the island of Nanumaga in 1991. He preached in the EKT Church and conducted Bible studies in the village hall during this time. More than 200 people received Christ through these meetings. In 1998, Brethren Youth from Veisari (Fiji) first visited Tuvalu on a Mission trip. Many people were challenged and encouraged during this trip and requested that Mase Teonea establish a Brethren Church in Tuvalu.
4. In 2001, the first gathering of the newly formed TBC took place on the capital, Funafuti. By 2002, the TBC had 166 members¹ and was registered as a religious body pursuant to statute. The TBC has continued to see rapid growth in its membership on the capital, despite the difficulties being faced by the TBC’s members in the outer islands. Currently, the TBC has around 300 members across Tuvalu.

Laws protecting freedom of religion in Tuvalu

Domestic law

5. The Constitution of Tuvalu contains a Bill of Rights, which guarantees protection of freedom of belief, freedom of expression and freedom of association. Freedom from discrimination on grounds of religious beliefs is also guaranteed.
6. The protection of fundamental rights and freedoms is subject to certain qualifications and limitations in the Bill of Rights. Of these, most notable is a provision which allows limitations or restrictions on the exercise of rights and freedoms if the limitation is aimed at a practice which is “divisive, unsettling or offensive to the people, or directly threatens Tuvaluan values and culture.” However, any action taken by Government, or any law or act done under a law which restricts rights and freedoms otherwise protected under the Constitution must be “reasonably justifiable within a democratic society.”

¹ 2002 Census. This figure represented 1.8% of the resident population of Tuvalu in 2002.

7. The High Court is given jurisdiction to determine questions arising under the Bill of Rights, and is empowered to grant a wide range of remedies in order to enforce the protection of fundamental rights and freedoms. Constitutional redress (monetary compensation) is one remedy that may be sought by an individual aggrieved by an alleged violation of the Bill of Rights; where justified, the Court's orders may also include administrative law remedies such as declarations or injunction orders.

International conventions ratified by Tuvalu

8. Tuvalu has ratified two international human rights treaties: The Convention on the Elimination of all forms of Discrimination Against Women (CEDAW); and the Convention on the Rights of the Child (CRC). Articles 2 and 14 of the CRC specifically protect the rights of children to freedom of thought, conscience and religion and prohibit discrimination against a child on those grounds. Tuvalu has not yet ratified either ICCPR or ICESCR.
9. International treaties ratified by Tuvalu are not automatically incorporated into domestic law. 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.² 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.³

Concerns relating to freedom of religion in Tuvalu

10. Tuvalu has a population of less than 10,000 people, spread across eight remote island groups. Tuvalu is a devoutly Christian nation. Very few Tuvaluans would describe themselves as atheist or agnostic. Church activities are an important part of community life. The vast majority of Tuvaluans are active participants in the EKT Church.⁴ Currently, there are around ten minority denominations in Tuvalu.
11. Although the TBC faced some initial challenges on the capital, Funafuti, shortly after its registration as a religious body, the TBC has largely operated without interference on Funafuti over the last four years. In the outer islands, however, TBC members face significant restrictions on their freedom of worship. Discrimination against TBC members by local governing authorities in the spheres of employment and provision of public services has also been problematic on some islands.
12. The TBC has found that the position taken by local governing authorities on the outer islands (comprised of statutory bodies and customary authorities) is generally not supportive of individual freedom of belief and expression. Several outer islands have forbidden the introduction of new religions by resolution. These resolutions, passed by the traditional governing assembly of each island group, have seen TBC members face persecution and punishment if they are perceived by the community to be acting in disobedience of the ban on new religions.

Discrimination on grounds of religious belief

13. The most significant persecution of members of the TBC has taken place on the island of Nanumaga. In 2003 a resolution was passed by the customary authority of the island which read:

“All new Churches are forbidden other than those already established on the island, which are... [four churches listed].”

² See, for example, *Tepulolo v Pou* [2005] TVHC 1; Case No 17 of 2003 (24 January 2005).

³ Section 17, *Interpretation and General Provisions Act* (Cap. 1A).

⁴ Of a resident population of 9220 persons in 2002, 8521 persons identified as followers of the EKT: 2002 Census.

This resolution continues to be in force to this day. Since 2006, more than ten TBC members have been dismissed from their positions in Government, the private sector and the local council. This represents almost every TBC member who previously held a paid position on Nanumaga. The dismissals are said to be in response to the TBC members' defiance of the resolution. Almost all TBC members who were employed on Nanumaga in any capacity at the time of the resolution have received letters from the local council and from the island assembly, warning them that they will be dismissed from work if they do not give up their faith.

14. In addition to the dismissals, there have been several other instances of direct discrimination against TBC members on Nanumaga, some of which have been effected by the local council. Examples include:

- attempts by the local council to remove members of the judiciary from office on the grounds of their faith;
- banning of TBC members from their traditional island clan;
- the dismissal of an elderly community leader from the traditional island assembly (against customary norms); and
- exclusion of TBC members from participation in development opportunities such as the PAC scheme.

15. There have also been isolated incidents of violence and religious slurs against TBC members. The worst example occurred in 2003, when members of the TBC were attending a bible study session in a private home. The meeting was interrupted by a group of about 30 men, known as the '*talafai*,' and traditionally empowered to carry out the wishes of the island assembly. The men shouted religious slurs at the TBC members and threw stones at the building. Some people received minor injuries.

16. Given the targeting of TBC members specifically on the basis of their faith, the TBC considers the stoning incident on Nanumaga to be a hate crime. Only eight of the persons involved in the stoning have been charged with a criminal offence. Some five years later, the matter has not yet come to trial.

17. The TBC view any instance of discrimination on the basis of religion, particularly if effected by governing authorities, as a very serious and unwelcome development in the otherwise peaceful and tolerant nation of Tuvalu. The TBC calls on the Government of Tuvalu to condemn all instances of hate crimes and discrimination which targets members of minority religious denominations. The police force, the Attorney General and the Ministry of Home Affairs are urged to take leadership in addressing the growing concerns relating to restrictions on religious freedoms in Tuvalu.

Restrictions on freedom of expression

18. In the TBC's confirmed knowledge, the *falekaupules* of Nukulaelae, Nui, Nanumaga, Nanumea and Nukufetau have taken steps to forbid "new" churches preaching or evangelising on their islands. The resolutions are being interpreted on some islands so as to prohibit the practice, membership, or preaching of any religion other than those already established. On outer islands where the TBC already had a membership base before the resolution was implemented, our members have been restricted in their individual worship and have not been allowed to receive visits from spiritual leaders.

19. On Nanumaga, the *falekaupule* resolution has been interpreted very broadly so as to restrict TBC members from:

- coming together for worship (meetings between two or more TBC families are forbidden);
- attending some village meetings;
- sharing their views at times in the village meetings;
- going house to house to share their faith; and

- gathering together as a Church to study the Bible and for prayer meetings.
20. In the media, the TBC has encountered some difficulties in attempting to air radio programs in Tuvalu. There is only one radio outlet in the country and it is operated and managed by the Government Media Department. There is no independent media in Tuvalu at present. The only means of broadcasting publicly is via the Government-run radio station.
21. Several times within the past four years, the TBC has not been allowed to broadcast its programs. The reason provided by the Media Department (and former Media Corporation) is that the program was “offensive to the people”. At other times, the Media Department has censored the TBC’s programming and edited its content without permission. The Media Department has also reduced the TBC’s time allocation while allowing extensive programming from the EKT. The TBC considers it to be the Government’s responsibility to eradicate discrimination in this field.

Restrictions on freedom of movement

22. The TBC is aware of several instances where members of minority religions have been refused entry to some islands because of their religious affiliation. Local councils have enforced these rulings by forbidding spiritual leaders from disembarking from the ship upon its arrival at the wharf.
- In 2003, the building in which a TBC bible study session was taking place was stoned by the island *talafai*.⁵ Shortly thereafter, the local council ordered Mase Teonea and another TBC leader to leave the island of Nanumaga. This order was received in writing on letterhead of the local council. On the advice of the Acting Commissioner of Police, the TBC leaders left the island for their own safety.
 - In 2007, a TBC leader went to Nanumaga in an attempt to visit TBC members. Upon disembarking at the wharf, he was ordered by the local council and island chief to get back on the boat and return to Funafuti.
 - Also in 2007, a TBC leader was visiting the island of Nukufetau to provide pastoral care to members. During a bible study meeting, the building was stoned. Shortly thereafter, the TBC leader was ordered by the local council to leave the island. He did so, on the next available ship.

The TBC views these impediments on freedom of movement as unjustified and unlawful. Recommendations for addressing this problem include training and awareness-raising among senior community leaders and local council officials on outer islands.

Access to effective remedies for human rights violations

23. In 2003, Mase Teonea sought declarations from the High Court as to the lawfulness of the resolution of the Nanumaga *falekaupule*, which purports to restrict the right to freedom, belief and association. In May 2006, the High Court ruled that the *falekaupule* was not acting beyond its customary authority in banning the establishment and practice of new religions on Nanumaga. Mase Teonea filed an appeal from the decision of the High Court in May 2006. The appeal is still awaiting hearing. Whilst it is established under the Constitution, the Court of Appeal for Tuvalu has never been convened.
24. It is strongly in the public interest that the principles relating to freedom of religion in Tuvalu are determined with finality by the Court of Appeal. For the Appellant, the failure to convene the Court of Appeal constitutes a serious limitation on his ability to utilise the judicial system to seek an effective remedy for a human rights violation. The TBC urges Government to convene the Court of Appeal as a matter of urgent national priority.

⁵ A group of youths traditionally empowered to carry out the wishes of the traditional governing assembly of the island.

25. In June 2006, several of the TBC members who were dismissed from their employment at the local council of Nanumaga filed proceedings in the High Court, alleging wrongful dismissal and discrimination. Due to unavailability of lawyers during most of 2007, difficulties in communicating with the People's Lawyer from the outer islands, and the infrequent sittings of the High Court, liability for the wrongful terminations was only recently determined, in May 2008. A final judgment as to compensation and other orders in the proceedings is yet to be delivered.

Impact on the development of the church activities

26. The difficulties encountered by the TBC set out above have slowed the growth of the Church. New members cannot find the teachings of the TBC because of the restriction on evangelising. The spiritual growth of TBC members has also been impeded, particularly on Nanumaga, because our members are not allowed to come together and encourage one another in their faith. The TBC is unable to provide effective pastoral care and services to its outer island members because of the ban on "new" religions that continues to be enforced by the governing authorities on some island groups.

27. The TBC is not alone in its grievances. Other minority churches have suffered similar hardship as a result of the resolutions. Discrimination on grounds of belief is being tolerated in many outer island communities. The TBC calls on the Government of Tuvalu to take leadership in addressing growing concerns relating to freedom of belief and worship in Tuvalu. The Government needs to take urgent steps toward condemnation of all forms of discrimination, and should direct resources toward raising awareness among senior officials of human rights issues.

Recommendations to Government

Recommendation 1. The TBC urges the Government of Tuvalu to convene the Court of Appeal as a matter of urgent national priority.

Recommendation 2. The TBC asks the Government of Tuvalu to undertake specific measures to address the challenge of ensuring access to justice, particularly for outer islands residents.

Recommendation 3. The TBC requests that the Government of Tuvalu consider ratification of ICCPR and ICESCR.

Recommendation 4. The TBC suggests that amendments to the *Falekaupule Act* are required so as to clearly define the relationship between the Bill of Rights in the Constitution, and the customary authority of the *Falekaupule*.

Recommendation 5. The TBC calls on the Government of Tuvalu to condemn all instances of hate crimes and discrimination which targets members of minority religious denominations. The police force, the Attorney General and the Ministry of Home Affairs are urged to take leadership in addressing the growing concerns relating to restrictions on religious freedoms in Tuvalu.

Recommendation 6. The TBC calls on the Government of Tuvalu, in conjunction with the United Nations Human Rights Council, to consider the implementation of training and awareness-raising throughout traditional island assemblies and local councils (*Kaupule*) on the role and importance of protecting human rights as part of good governance.

28. The TBC extends its sincere gratitude to the UNHRC for the opportunity to submit this report.