

## FOLLOW UP TO THE PREVIOUS REVIEW

1. Amnesty International welcomes the positive steps taken by the government of Tuvalu to implement the 78 out of 127 recommendations it had committed to at the last UPR session.<sup>1</sup>
2. Tuvalu ratified the ILO Worst Forms of Child Labour Convention (No. 182) in 2019<sup>2</sup> and updated its nationally determined contributions (NDCs) on climate emissions in 2022.<sup>3</sup>
3. However, Tuvalu is yet to fulfil all of its commitments to ratify additional human rights treaties made at the last review, including but not limited to the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT)<sup>4</sup> and the International Covenant on Economic, Social and Cultural Rights (CESCR).<sup>5</sup>
4. Implementation of previous recommendations to protect women from violence and discrimination, to protect the right to freedom of religion or belief in law and practice for national and ethnic minorities would be an important step towards improving the human rights situation in the country.
5. As a small island country, with a population of around 11,000 people, Tuvalu may require international co-operation and assistance from other countries to attain greater human rights protection, especially to put in place adequate measures to support people to adapt to the impacts of the climate crisis and to provide support and remedy to people facing loss and damage.
6. Tuvalu's reporting under the Convention on the Elimination of Discrimination Against Women has been overdue since 2019.
7. Annex 1 is a matrix of recommendations from Tuvalu's last review. Of the accepted recommendations, implemented recommendations are highlighted in green, partly implemented are highlighted in yellow and not yet implemented highlighted in red. Tuvalu lacks comprehensive data and information to accurately assess the implementation of some of the recommendations.

## THE NATIONAL HUMAN RIGHTS FRAMEWORK

1. Tuvalu's Constitution includes a Bill of Rights which guarantees non-discrimination on the basis of race, place of origin, political opinions, colour, religious beliefs and sex. The Constitution does not mention gender identity or sexual orientation, and this remains challenging for the LGBTI community. In 2018 the Tuvalu Constitutional Review Project was created to review and update the Constitution; however, it is still ongoing with no proposed end date.
2. Tuvalu's Office of the Chief Ombudsman acts as the national human rights institution (NHRI). The Ombudsman is responsible for aligning national laws with international conventions per Tuvalu's National Strategy for Sustainable Development for 2016 to 2020.<sup>6</sup> However, the Office of the Chief Ombudsman is not accredited as a national human rights institution (NHRI) under the Paris Principles.
3. Tuvalu's superior court under the Constitution is the High Court.
4. There are no political parties in Tuvalu; parliament members are independents who are required to represent the interests of their communities.
5. Access to justice for gender-based violence remains difficult for women as marital rape is not explicitly criminalised in the penal code.<sup>7</sup> Abortion is also criminalized in all circumstances except where necessary to

protect the woman's life. Penalties vary from 10 years to life imprisonment.<sup>8</sup>

## THE HUMAN RIGHTS SITUATION ON THE GROUND

### Freedom of religion, culture and belief

6. Tuvalu's Constitution prioritizes traditional standards, values and practices over the individual's right to freedom of religion, freedom of belief and freedom of peaceful assembly and association (Article 11.2).
7. The Religious Bodies Registration Act 2008 deems that a 'religious body' of 50 persons or more must register with the state and be approved by the Falekaupule (the community or village elders) from their island (Article 2).<sup>9</sup> Failure to do so may result in prosecution. The Religious Organisation Restriction Act 2020 provides that where Tuvaluan values and culture are threatened, a community leaders may withdraw the approval of a religious organization (Section 4.4).<sup>10</sup> While the Tuvalu Government seeks to promote religious tolerance, there are reports of ineffective communication for outer islands. Minority religions have successfully won cases in the court where local leaders have attempted to restrict religious activities.<sup>11</sup>
8. In 2019, the UN Special Rapporteur in the field of cultural rights visited Tuvalu and made recommendations on protecting freedom of religion and non-discrimination, including by ratifying ICESCR and strengthening grounds for non-discrimination in Tuvalu's Constitution.<sup>12</sup>

### Gender equality and ending violence against women

9. Tuvalu made efforts to prioritize women and girls in the National Strategy for Sustainable Development for 2016 to 2020 (unclear if this has been updated more recently). However, the impact of such strategies to strengthen equal access to economic empowerment and leadership, and to eliminate all forms of violence and discrimination against women and girls remains unclear.<sup>13</sup>
10. Tuvalu's Multiple Indicator Cluster Survey found that in 2019, 26% of women and girls aged between 15 to 49 years experienced sexual violence from their former husband/partner. It also found that 23.7% of men aged between 35 to 49 years believed it was justifiable to beat their wife if she argued with him.<sup>14</sup>
11. Since Tuvalu launched their Gender Strategy and Action Plan (GSAP) as part of their Coastal Adaption Project (TCAP) for 2017 to 2024, women in leadership positions have significantly increased and women have become more involved in the TCAP process. However, Tuvalu should further integrate women into policymaking and implementation, establish training on gender mainstreaming, and involve women in decisions where they are under-represented.<sup>15</sup>

### People with disabilities

12. Persons with physical disabilities from birth are less likely to receive an education due to the lack of specialized education. Persons with disabilities are also less likely to gain employment or attend community events, as their accessibility is limited. People with psycho-social disabilities are further disadvantaged, as free basic healthcare does not extend to required specialist care.
13. According to the National Strategy for Sustainable Development for 2016 to 2020, Tuvalu's National Disability Co-ordinating Committee (TNDCC) was in the process of formulating a draft National Disability Policy.<sup>16</sup> However there have been no reported updates on this.

### Sexual orientation, gender identity, expression and sex characteristics

14. In 2019, the Equality and Justice Alliance (EJA) reported that there was substantial traditional recognition for third gender communities in Tuvalu due to historical societal and communal roles. However, discrimination has reportedly increased in recent years.<sup>17</sup>
15. Sections 153 and 155 of the Penal Code criminalise same-sex sexual activity. While there is no evidence that these provisions are actively enforced, they need to be repealed as a priority to ensure the wellbeing and safety of LGBTI people.
16. Tuvalu's Labour and Employment Relations Act of 2017 prohibits discrimination based on sexual orientation; however, there are no laws protecting people from discrimination on the basis of gender identity or expression and sex characteristics, thus excluding transgender people from such protections.

### **Adequate health care**

17. The World Bank provided a US\$15 million grant towards Tuvalu's National Health Strategic Plan for 2020 to 2024 to improve national health care services. This was to support Tuvalu's Health System Strengthening Project. Funds have been specifically directed to a new wing to the Princess Margaret Hospital (PMH) in Funafuti and to eleven other health clinics across the country (level of implementation of the grant is unclear). Tuvalu's Health System Strengthening Project proposes to establish a specialized noncommunicable disease (NCD) clinic in the PMH upgrade. However, outer islands with the highest rates of NCDs in the country, receive limited maintenance to their health facilities. Additionally, there is financial strain on Tuvalu's ability to fund the overseas medical treatment scheme for the treatment of severe NCD cases.<sup>18</sup>
18. While community outreach services are provided for outer islands, all doctors in Tuvalu are based at PMH. The eight outer islands have no doctors, while two islands lack health clinics. A further two islands do not have a midwife, while a third has a diploma level midwife. All islands have at least two nurses and rural healthcare workers, except for Niulakita Island which only has one nurse.<sup>19</sup>
19. In January 2023, 500 dignity kits worth US\$36,000 were distributed by UNFPA to women and girls in the worst drought affected islands; Nanumea, Nanumaga and Niutao Island, to maintain sexual and reproductive health and provide them with gender-based violence supplies; however human resources should be strengthened to ensure adequate access to sexual, reproductive and maternal health services.<sup>20</sup>

### **Climate crisis and human rights**

20. The Pacific Island region contributes less than 0.03% to global emissions, yet it is particularly at risk of the damaging impacts of climate change such as rising sea levels and increased severe weather events. Sitting less than five metres above sea level, Tuvalu is at high risk of coastal erosion, tidal surges, longer-lasting droughts and more frequent tropical cyclones.<sup>21</sup>
21. Since 2017, the Green Climate Fund (GCF) has provided financial assistance for Tuvalu Coastal Adaption Project (TCAP) to support environmental science and coastal engineering scholarships, training in shoreline monitoring and coastal planning, integrated learning about climate change in the primary school curriculum, coastal assessments, and training for outer-island government officers in ecosystem-based adaption coastal protection.<sup>22</sup> TCAP's final report is expected to be released to the public in 2024 following two regional conferences to be held this year. The Australian government has also provided significant funds to strengthen Tuvalu's resilience to climate change.
22. In 2022, Tuvalu updated its NDCs, focusing on mitigation and promoting a zero-carbon development pathway by 2050. This is outlined in Tuvalu's Environmental and Social Management Plan (ESMP) 2021, developed as a management tool for TCAP.<sup>23</sup> Tuvalu has been a vocal advocate for the establishment of an international financial mechanism to support people suffering climate-induced loss and damage.

23. Tuvalu is looking at legal ways to preserve ownership of its maritime zones and recognition of the state, even if the island is fully submerged or uninhabitable as a result of the climate crisis. Any relocation plans must include adequate consultation with affected communities and be consistent with international human rights law and standards. Tuvalu may require and is entitled to international assistance and co-operation to support people facing loss and damage, including those who might need to relocate because their country is becoming uninhabitable due to climate change.

## RECOMMENDATIONS FOR ACTION BY THE STATE UNDER REVIEW

### Amnesty International calls on the government of Tuvalu to:

#### The national human rights framework

24. Accede to the remaining core human rights treaties and incorporate these into domestic law.
25. Seek NHRI accreditation for the office of the Chief Ombudsman in accordance with the principles relating to the status of national institutions for the promotion and protection of human rights (the Paris Principles).
26. Fulfil its existing obligations for treaty body reporting under CEDAW as a priority and ensure that future reports are submitted in a timely manner with appropriate civil society engagement and consultation.

#### Freedom of religion

27. Amend Article 3.1 in the Religious Bodies Registration Act 2008 and section 4.4 of the Religious Organisations Restriction Act 2020 to guarantee freedom of religion for all individuals.
28. Continue to promote communication of religious tolerance for outer islands and hold local leaders accountable for abuses against minority religious groups.

#### Violence against women and girls

29. Reform the Penal Code to criminalize marital rape and continue to promote awareness and training on gender- based violence.
30. Continue to raise societal awareness about the contents of the Family Protection and Domestic Violence Act of 2014 and develop a national action plan on the prevention of violence against women and girls.
31. Continue to integrate women into political leadership positions and ensure women are involved in policymaking and implementation.
32. Improve access to information and accessibility of sexual and reproductive health services and decriminalize abortion.

#### People with disabilities

33. Implement legislation to ensure that public spaces and services can accommodate people with disabilities.
34. Uphold and protect the right to education for all persons with disabilities by expanding education services and facilities and develop a separate curriculum for special needs students.
35. Improve availability and access to public health care for people with psycho-social disabilities.

#### Sexual orientation, gender identity and expression and sex characteristics

36. Revise the Penal code to include a gender-neutral definition of rape and decriminalize same-sex sexual activity.
37. Develop and adopt legal and administrative measures to investigate acts of discrimination, stigmatization, and violence against people because of their sexual orientation, gender identity and expression and sex

characteristics and ensure that people are able to effectively access remedies when their rights are violated, including through criminal prosecutions, compensation, shelters, medical and psycho-social support.

### Adequate health care

38. Strengthen human and financial resources of health-care services for people living on outer islands and direct budgetary allocations to the maintenance of health clinics on outer islands.
39. Improve access to emergency obstetric care, midwife training and resources devoted to maternal and reproductive healthcare for outer islands.
40. Provide midwives, nurses and rural health care workers on outer islands with specialized training in noncommunicable diseases (NCD) and provide outer island health clinics with the necessary equipment for treatment of NCDs.

### Climate crisis and human rights

41. Continue to implement TCAPs climate change adaption policies to avoid or minimise impacts on the human rights of people in Tuvalu and regularly and publicly report on progress through the Environmental and Social Management Plan.
42. Conduct inclusive and participatory loss and damage needs assessments considering the adverse effect of climate change on the enjoyment of human rights and ensuring that individuals and groups most affected are fully able to participate.
43. Ensure any new fund received to address loss and damage can be accessed by most affected groups, including women, Indigenous peoples, people with disabilities and other marginalized groups, particularly those facing multiple and intersecting forms of discrimination.
44. Seek international co-operation and assistance on proposed plans such as international relocation with particular consideration given to the preservation of social, economic and cultural rights due to climate change and ensure such plans are consistent with international human rights laws and standards, including that indigenous people are able to maintain their collective identity and right to self-determination in a safe and adequate location that ensures all their human rights are guaranteed.

<sup>1</sup> UN Human Rights Council, Report of the Working Group on the Universal Periodic Review: Tuvalu, 2-28 September 2018, UN Doc. A/HRC/39/8 and its addendum A/HRC/39/8/Add.1

<sup>2</sup> A/HRC/39/8/Add.1-Para 2, recommendation 101.30 (United Kingdom of Great Britain and Northern Ireland)

<sup>3</sup> A/HRC/39/8/Add.1-Para 2, recommendations 101.69 (Haiti), 101.70 (Costa Rica), 101.71 (Cuba)

<sup>4</sup> A/HRC/39/8/Add.1-Para 2, recommendations 101.14 (Ukraine), 101.24 (Uruguay)

<sup>5</sup> A/HRC/39/8/Add.1-Para 2, recommendation 101.1 (Ghana)

<sup>6</sup> Government of Tuvalu, 'Te Kakeega III: National Strategy for Sustainable Development 2016-2020', March 2016, <https://www.adb.org/sites/default/files/linked-documents/cobp-tuv-2017-2019-ld-02.pdf> page 73.

<sup>7</sup> See Tuvalu's Penal Code [https://tuvalu-legislation.tv/cms/images/LEGISLATION/PRINCIPAL/1965/1965-0007/PenalCode\\_1.pdf](https://tuvalu-legislation.tv/cms/images/LEGISLATION/PRINCIPAL/1965/1965-0007/PenalCode_1.pdf), Part XVI.

<sup>8</sup> See Tuvalu's Penal Code [https://tuvalu-legislation.tv/cms/images/LEGISLATION/PRINCIPAL/1965/1965-0007/PenalCode\\_1.pdf](https://tuvalu-legislation.tv/cms/images/LEGISLATION/PRINCIPAL/1965/1965-0007/PenalCode_1.pdf), ss150-152.

<sup>9</sup> See Tuvalu's Religious Bodies Registration Act, [https://tuvalu-legislation.tv/cms/images/LEGISLATION/PRINCIPAL/1947/1947-0003/ReligiousBodiesRegistrationAct\\_1.pdf](https://tuvalu-legislation.tv/cms/images/LEGISLATION/PRINCIPAL/1947/1947-0003/ReligiousBodiesRegistrationAct_1.pdf)

<sup>10</sup> See Tuvalu's Religious Bodies Registration Act, [https://tuvalu-legislation.tv/cms/images/LEGISLATION/PRINCIPAL/2010/2010-0007/ReligiousOrganisationsRestrictionAct\\_1.pdf](https://tuvalu-legislation.tv/cms/images/LEGISLATION/PRINCIPAL/2010/2010-0007/ReligiousOrganisationsRestrictionAct_1.pdf)

<sup>11</sup> United Nations Office of the High Commissioner for Human Rights, 'Visit to Tuvalu: Report of the Special Rapporteur in the field of Cultural Rights', 24 December 2020, UN Doc. A/HRC/46/34/Add.1

<sup>12</sup> A/HRC/46/34/Add.1

<sup>13</sup> Government of Tuvalu, 'Te Kakeega III: National Strategy for Sustainable Development 2016-2020', March 2016, <https://www.adb.org/sites/default/files/linked-documents/cobp-tuv-2017-2019-ld-02.pdf> p.20

<sup>14</sup> Government of Tuvalu, 'Tuvalu Multiple Indicator Cluster Survey 2019-2020: Survey Findings Report', July 2021, <https://washdata.org/sites/default/files/2022-02/Tuvalu%202019-20%20MICS-sm.pdf> p.26

<sup>15</sup> United Nations Development Programme, 'Tuvalu Coastal Adaption Project Empowering Women and Girls', 21 December 2021, <https://www.undp.org/pacific/news/tuvalu-coastal-adaptation-project-empowering-women-and-girls#:~:text=Women%20have%20facilitated%20some%20of,government%2C%20NGO%20and%20community%20representatives.>

<sup>16</sup> Government of Tuvalu, 'Te Kakeega III: National Strategy for Sustainable Development 2016-2020', March 2016, <https://www.adb.org/sites/default/files/linked-documents/cobp-tuv-2017-2019-ld-02.pdf>

<sup>17</sup> [https://www.pgaction.org/pdf/Opportunities\\_for\\_women\\_and\\_LGBTI\\_rights\\_Pacific.pdf](https://www.pgaction.org/pdf/Opportunities_for_women_and_LGBTI_rights_Pacific.pdf) p.49

<sup>18</sup> Government of Tuvalu, 'Tuvalu's Health System Strengthening Project: Preliminary Environment and Social Management Plan', February 2022, available at [https://tuvalu-data.sprep.org/system/files/TV%20HSSP%20ESMP\\_Final%281%29.pdf](https://tuvalu-data.sprep.org/system/files/TV%20HSSP%20ESMP_Final%281%29.pdf)

<sup>19</sup> Government of Tuvalu, 'Tuvalu's Health System Strengthening Project: Preliminary Environment and Social Management Plan', February 2022, available at [https://tuvalu-data.sprep.org/system/files/TV%20HSSP%20ESMP\\_Final%281%29.pdf](https://tuvalu-data.sprep.org/system/files/TV%20HSSP%20ESMP_Final%281%29.pdf)

<sup>20</sup> United Nations Population Fund (UNFPA), 'Tuvalu's drought affected women and girls receive \$51,00AUD worth of essential sexual and reproductive health and GBV supplies' 16 January 2023,

<https://pacific.unfpa.org/en/news/tuvalu-s-drought-affected-women-and-girls-receive-aud-51000-worth-essential-sexual-and#:~:text=Tuvalu's%20Drought-affected%20Women%20and%20Girls%20Receive%20AUD%2051%2C000-worth,and%20Learn%20Tuvalu%2C%20on%2013%20January%202022%2C%20Funafuti>

<sup>21</sup> IPCC, "Climate Change 2022: Impacts, Adaptation and Vulnerability", Working Group II Contribution to the Sixth Assessment Report: Chapter 15 - Small Islands, February 2022, [ipcc.ch/report/ar6/wg2/downloads/report/IPCC\\_AR6\\_WGII\\_Chapter15.pdf](https://ipcc.ch/report/ar6/wg2/downloads/report/IPCC_AR6_WGII_Chapter15.pdf)

<sup>22</sup> Government of Tuvalu, 'Tuvalu Coastal Adaption Project', 2018, <https://tcap.tv/timeline>

<sup>23</sup> Government of Tuvalu, 'Tuvalu Coastal Adaption Project', 2018, <https://tcap.tv/timeline>