

Universal Periodic Review of the Republic of Nauru 2015

Nauru Island Association of Non-Government Organisation

Nauru – March 2015

Summary

Via this submission, Nauru Island Association of non-Government Organisation seeks to contribute to the protection of human rights in Nauru. In this submission, NIANGO provides information under Sections as stipulated in the General Guidelines for the Preparation of Information under the Universal Periodic Review.

1. Background

1.1 Methodology

A week of national consultation was held 2 March – 6 March 2015 conducted by the Regional Rights Resources Team (RRRT) of the Secretariat of the Pacific Community.

1.2 Nauru Island Association of Non-Government Organisations

Nauru Island Association non-Government Organisations was established in 1992. It is an umbrella organisation for NGOs/CBOs/CSOs. Membership is not compulsory. The basic objectives of NIANGO is to provide platform for NGO advocacy and common representation; information to members; network with regional and international NGOs; links with organisations into capacity building activities; and, assistance to members in institutional strengthening.

1.3 Nauru

Nauru is a small Island in the Pacific Ocean; a raised atoll with land area of 21 sq kilometres . It has a population of about 10,100 (2011 Census); with a density of 478 per sq kilometre. The island gained independence in 1968. The economy is based on the export of phosphate soil that is mined in the phosphate lands located on the central plateau which is 80% of the land area of the island. Mining has left the land disfigured. Tall and packed coral pinnacles are exposed that render the land uninhabitable and useless. The population is confined to living along the flat narrow coastal belt, 20% of the land.

Phosphate mining started in the early 1900's. Since independence, it has been the mainstay of Nauru's wealth and sustenance. In the late 1990's, Nauru's economy collapsed as a result of financial mismanagement causing a severe drop in standard of living of Nauruan families that significantly affected their security of food and livelihood.

Trapped in an economic predicament, Nauru volunteered to **host maritime asylum seekers** who had been turned away by the Australian government from entering Australia. Nauru first hosted asylum seekers under the Pacific Solution Programme in 2004 and which terminated in 2007. In 2012, and after signing the Refugee Convention 1957, Nauru hosted a refugee programme as a Regional Processing Centre. Under this programme, Nauru processed asylum seekers identified as refugees who are "temporarily" resettled in Nauru. The refugee programme generates much needed revenue for Nauru. The majority of the camps for the asylum seekers and infrastructure for the programme are situated in the mined-out phosphate lands on 20-years leases.

2. FRAMEWORK

2.1 INTERNATIONAL OBLIGATIONS

NIANGO commends the Government of Nauru for ratifying CAT, CEDAW and the CRPD. NIANGO also commends the Government of Nauru for currently undertaking research for the CRC initial 2-year report. NIANGO now urges the Government to take steps to harmonise relevant domestic legislations aligned with the principles of the Conventions of CRC, CAT, CEDAW and CRPD.

3. PROMOTION AND PROTECTION OF HUMAN RIGHTS ON THE GROUND/ STANDARD OF LIVING, HEALTH AND WELL BEING

3.1 REHABILITATION OF MINED-OUT PHOSPHATE LANDS

With 80% of Nauruan lands in a disfigured and unusable state, Nauruan families are prevented from growing food crops and farming animals, building homes, establishing businesses and undertaking other development activities that will improve living conditions and the standard of living for the families and their children. Nauruan families depend on exorbitantly priced imported goods and foods.

Nauru's vision for the future survival and well-being of the Nauruan people is to rehabilitate the mined-out phosphate lands. The Constitution of Nauru, Art. 83(2), provides for the rehabilitation of the mined-out phosphate lands. Schedule 6 of the Constitution listing Trust Funds includes a Nauru Rehabilitation Fund "for the purpose of restoring or improving the parts of the island of Nauru that have been affected by mining of phosphate". This Fund has since been depleted. The RONPhos Act 2005 empowers the RONPhos Corporation (originally the Nauru Phosphate Corporation) "to rehabilitate and develop lands, including through removal of materials," (s.10 (2)(h). The Nauru Rehabilitation Corporation Act 1997 charges the Nauru Rehabilitation Corporation to coordinate, promote, carry out, manage, and participate in, rehabilitation works in Nauru and other matters connected " (s.4).

In 1988, Nauru conducted a Commission of Inquiry into the mined-out phosphate lands, the findings of which Nauru based its case for compensation before the International Court of Justice against the tripartite administration governments of Australia, New Zealand and the United Kingdom. Nauru was awarded \$107million compensation in 1991. This fund is about depleted. In 1994, a proposed Master Land Use Plan for the mined-out phosphate lands was developed. To implement the MLUP, customary landowners would need to be consulted for their consent for the use of their lands.

18 years after the establishment of the Rehabilitation Corporation, physical rehabilitation according to the MLUP has yet to commence. Mining of secondary deposits of phosphate soil and extraction of coral pinnacles for commercial export are continuing. The recent 20-years land leases for the purposes of the Regional Processing Centre may impose a further delay to the rehabilitation programme, ultimately a delay of up to forty years. For 108 years now, Nauruan customary landowners have not been able to access their lands that had been designated as phosphate lands on the central plateau.

What is it now that stalls rehabilitation? Invariably, financial resources is a huge deterrent. The scarcity of resources does not discharge the State of its duty and obligations to inform the public on the status of rehabilitation and to review its policies on the long-stalled rehabilitation project. In the final analysis, "the burden is on the State to demonstrate that it is making measurable progress towards the full realisation of the rights in question".

Issues:

It is a concern that rehabilitation of the mined-out phosphate lands according to the Master Land Use Plan has not been implemented. It is also a concern that recent Governments have failed to inform the Nauruan people of the status and progress of rehabilitation, the vision for Nauru for the next 80-100 years (Rehabilitation and Development Feasibility Study, 1994). Rehabilitation of the mined-out phosphate lands

will fulfil economic, social and cultural rights to an adequate standard of living including food security, housing and opportunities to continued improvement of living conditions. Ultimately, rehabilitation of the mined-out phosphate lands is protection of the right to life.

Recommendations:

- i. Government of Nauru to inform the Nauruan people of current policies regarding the rehabilitation of the mined-out phosphate lands and implementation of the proposed Master Land Use Plan;
- ii. Government of Nauru to inform the Nauruan people of the status and progress of the physical rehabilitation of the mined-out phosphate lands and the implementation of the proposed Master Land Use Plan;
- iii. Government of Nauru to seek assistance with the international community in relation to finance and technical support to augment nationally available resources and implementation capacity, to progress activities necessary for the implementation of the physical rehabilitation of mined-out phosphate lands and the active implementation of the proposed Master Land Use Plan.

3.2 RIGHT TO INFORMATION

Freedom of expression is safeguarded in Art.12 of the Nauru Constitution. There is no protection for freedom of information in law. Nauru is undergoing massive social, cultural and political changes that impact on the lives of the Nauruan people. Government operates all media and information outlets. Access to information enhances the ability of civil society to maintain Government accountability.

Issue:

It is a concern that all media and information outlets are government operated. Therefore, for civil society to be able to effectively play its role in keeping government accountable, legislation for the right to information should be implemented.

Recommendations:

- i. Government of Nauru to legislate a right to information law;
- ii. Government of Nauru to establish information centres for i) the rehabilitation of mined-out phosphate lands; ii) asylum seekers and refugees; and, iii) land related records;
- iii. Government of Nauru to engage in meaningful consultations with the Nauruan people in national decision-making processes including on matters regarding rehabilitation, land, asylum seekers and refugees, and general elections.

3.3 GENERAL ELECTIONS & VOTER TRANSFERS

The next General Elections for the Nauru Parliament will be held next year 2016. The Electoral Act of 1965-2007 permits the transfer of voters between constituencies. Transfers of voters in the past had been vested in the Nauru Local Government Council. After abolishing the NLGC, voter transfer became vested in the Nauru Council which is the Nauru Government Cabinet. In the past, there have been consistent voter complaints in regard to how transfers have been managed. In 2013, Government appointed a group of people charged with approving applications for transfers of voters for the 2013 General Elections. The

members of this group were Heads of Departments and Heads of Churches. Ultimate approval is with Cabinet Ministers.

Issues:

It is a concern that voter transfers for the General Elections is vested in the Cabinet Ministers who are leading contenders in the elections. It is a conflict of interest. It is also a concern that Heads of Government Departments are members of the voter transfer approval group. This is again a conflict of interest regarding the independence of the group from Government influence.

Recommendations:

- i. Government of Nauru to create a body that is independent of Government which is vested with the authority to transfer a voter from one constituency to another constituency;
- ii. Government of Nauru to conduct voter education to enable informed choices in voting

3.4 PARLIAMENT SITS WITH 68% MEMBERS – Right to form government

Nauru Parliaments has 19 members, one of which is elected Speaker. During 2014, five members of Parliament were suspended and the Supreme Court has since interpreted that Parliament is the master of its own destiny. Parliament has now been operating on 68% of total parliamentarians to make national decisions, allocate resources to constituencies, and enact laws.

Issue:

With 68% of the members of Parliament operating, this means that the voice of 32% of the Nauruan voters is not being heard in Parliament. This is unfair representation and it also means lost economic opportunities in national processes for the constituents who are not being represented. Lost opportunities to resources impact on the ability of constituents to improve their standard of living. Their right to representation is neither respected nor fulfilled.

Recommendations:

- i. Parliament to facilitate for peaceful resolutions; and,
- ii. Parliament to facilitate for processes of electoral by-elections.

4. ACHIEVEMENTS, BEST PRACTICES, CHALLENGES AND CONSTRAINTS

Government of Nauru implementing UPR 2012 recommendations:

NIANGO commends the Government of Nauru for:

- i) currently undertaking survey for the initial 2-year report for the Convention of the Rights of the Child;
- ii) establishing a national focal point for children;
- iii) progressively paying monies owed to Nauruans including income of phosphate, unpaid salary, Provident Fund and Superannuation (with particular acknowledgement of the Republic of China for assistance with unpaid salary).

NIANGO thanks the Regional Rights Resources Team for enabling the training programme to participate in the 2015 UPR process.

