

**TONGA CIVIL SOCIETY ORGANISATION (CSO) – HUMAN RIGHTS TASK FORCE
(HRTF) UNIVERASL PERIODIC REVIEW SUBMISSION**

Submission to the 3rd Cycle of the UPR

29th June 2017

In 2010, a CSO Human Rights Taskforce (HRTF) was established amongst Civil Society Organizations in Tonga with the overall aim of prioritizing the mainstreaming of Human Rights into national and institutional operational policies. The CSO HRTF provides a platform for the dialogue and sharing of human rights good practices and challenges, not only amongst CSOs but also communicating these good practices to Government Ministries and Departments.

Members of the Taskforce engaged in this Joint Submission includes the Civil Society Forum of Tonga (CSFT), Ma'a Fafine mo e Famili Inc (MFF), the Women and Children Crisis Centre (WCCC), Tonga Women National Congress (TWNC), Tonga Public Service Association (TPSA), Tonga Leiti's Association (TLA), Talitha Project and other individual human rights defenders.

This is the second time the Tonga Civil Society Organisation (CSO) – Human Rights Task Force (HRTF) is collectively presenting a Joint Submission to the 3rd Tonga UPR process 29th Session (January – February 2018).

CIVIL SOCIETY HUMAN RIGHTS TASK FORCE UPR TONGA REPORT

A. Description of Methodology and Broad Consultation Process

The CSO Human Rights Taskforce (HRTF) was established by Civil Society Organisations in Tonga with the overall aim of prioritizing the mainstreaming of human rights principles into national and institutional practices and operational policies. The CSO HRTF provides a critical platform, amongst its members, to undertake in-depth analysis of ongoing human rights issues in the country. It also documents human rights best practices, challenges and violations by the State as the key duty bearer. Consequently, the CSO HRTF have collectively identified the UPR process as a critical and effective means of communicating human rights achievements in-country, as well as highlighting violations and inadequate gaps that need urgent addressing. With the financial and technical support of regional and donor partners, namely the Secretariat of the Pacific Community Regional Rights Resource Centre (SPC RRRT), Australian Aid (DFAT), and the Pacific Leadership Programme (PLP), the following organisations as members of the CSO HRTF hereby submit this joint stakeholder report; the Civil Society Forum of Tonga (CSFT), Ma'a Fafine mo e Famili Inc (MFF), the Women and Children Crisis Centre (WCCC), Talitha Project, Tonga Women National Congress (TWNC), Tonga Public Service Association (TPSA), Tonga Leiti's Association (TLA) and other individual human rights defenders. This is the second joint stakeholder report HRTF has submitted under the UPR process, the first being submitted to the 2012 UPR cycle.

B. Development since the previous review in background of the State under review and framework

As noted in the previous report, the most significant achievement of the 2010 electoral reforms was the relinquishing of the King's powers to appoint the Prime Minister. The 2014 General Election recorded a milestone in Tonga's political history. The country witnessed the swearing in of its first Prime Minister who was elected from among the representatives of the people.

Following the 2014 general elections, the newly appointed government approved in Cabinet to re-submit ratification of CEDAW with advise from Crown Law on reservations to parts of Article 2, 10, 12, 14 and 16. The recommendations submitted by the AGO's was based on the assumption that the articles reserved would be open to interpretation where there presented a possibility that the State would be requested by the CEDAW committee to legalise same sex marriage and abortion post-ratification. This had triggered controversial public debate coupled with the lack of understanding of human rights among the general public and key decision makers. Conservative institutions such as various churches, had requested that the government put the ratification of CEDAW on hold. Consequently, Privy Council made a decision that it was unconstitutional for the Government to ratify CEDAW as in accordance to Clause 39 of the Constitution where it states that only the King can make a Treaty. The CSO HRTF in this report is calling for a Judicial Review to provide clarity on who has the authority to ratify CEDAW and to determine whether CEDAW is a Convention or a Treaty.

The set-up of the Royal Land Commission (RLC) also paved the way for positive legal reform with its final report making recommendations to improve women's rights and access to land. The recommendations made was a significant progress on the country's archaic and gender-discriminative land tenure system dating back 137 years. Unfortunately, the recommendations made by the RLC has not been endorsed by any of the successive parliaments since the RLC released its final report in 2012.

Other areas of progress was the enactment of the Family Protection Act (2013) which aimed to provide greater protection for victims of domestic violence. The Act included three core measures that ensured the rights of women were enabled and protected (1) increased power for police to issue protection orders on the spot for maximum of 7 days; (2) a legal requirement to inform victims of their rights and what is involved in legal proceedings and (3) the formation of a committee of key community stakeholders to discuss how to best monitor and evaluate the Act.

Dialogue has also progressed in the area of establishing a human rights mechanism in-country at the national level. Tonga as a country in transition to a more democratic form of governance requires the relevant accountable institutions to support its meaningful transition. As such as the call for Government to establish a Human Right Commission and a Anti-Corruption Commission will assist in better addressing Human Right violations and issues

Low participation of women in across the decision making spectrum is a note of concern. Whilst there has been an increase in female appointed CEOs to government ministries, the appointment of women to the highest accolades of decision making remains, in most places, stagnant. For example, there has been no women appointed judges to date since the last report, no female cabinet members and only one female in the current parliament following a bye-election in June 2016. This reinforces the call from the CSO HRTF for a Temporary Special Measure (TSM) to be in place to increase women's participation in parliament and key decision making positions. It is important to note here though that His Majesty today the 29th June 2017 has dubbed a female a Law Lord. She with four other male lawyers are the King's Law Lords to give legal advice to His Majesty. Having a woman as a Law Lord is a big step forth for women.

Thematic Area One: Democratization and law reforms

1. Parliament in late 2010 the Parliament of the Kingdom of Tonga adopted a democratic reform to its political structure. The Parliament now comprises 17 members elected each by members of the 17 Electorate Constituencies.
2. The special provision of 9 seats allocated for the 40-member Nobles of the Realm elected amongst their peers. The retention of the 9 seats is not only undemocratic but is also vulnerable to manipulation of power.
3. The nobles of the realm receive a yearly remuneration taken from the taxpayers' money but with no clear job description. It is assumed that their most important responsibility is to live and advice people of their estates but many, if not all of them, have left their estates behind to live in their residences at the Capital Town of Nuku'alofa.
4. The legal Age of Maturity for the nobles is 21 years of age, unlike the legal maturity age for the King which is 18-years old, Clause 27. However, there is no mention of an Age of Maturity for the common people of Tonga. The three main references in the Constitution

to the ages of the common person is in the Voting age which is 21 years old, the age of a Juror and the age in which a male could register land and that is 16 years old. This submission would like to call on the Government to set an age for all children in Tonga. The CRC defines all under the age of 18 as children. This submission sees that all children in Tonga, including the nobles and the King should have one Age of Maturity and that is 18 years old. This will aid the work of the police and the laws do not state who is a juvenile or who is not.

5. Under the Births, Deaths and Marriage Registration Act 1962, it states that children from the ages of 15 – 17 years old be allowed to marry with parental consent.
6. Electoral Boundaries Commission Act 2010 has divided the Kingdom into 17 electoral constituencies containing a fairly equal number of residents. For each of these constituencies, there is one representative. Parliament has approved constituency funds for each constituency and the MP of this constituency priorities what he sees will be in his best interest rather than the national priorities. The MP only looks after his constituency's needs rather than looking at the needs of the whole nation. This state of affairs encourages self-interest and individualism, forcing the representatives to focus and emphasize on each of their individual constituency and individual agendas (for re-election purpose) rather than putting emphasized focus on the national interest and address severe national problems. It has built a 'project deliverer' mentality as opposed to being a 'Parliamentarian' and focus moved to focus on delivering projects and building popularity credits.
7. Tonga is traditionally a patriarchal society where the most senior decision-making positions are held by males. This is indicative in the last two democratic elections 2010 and 2014 when there was no woman elected in the general election into Parliament. It was not until a Parliament by-election in 2016 that a woman is now in Parliament. We as a CSO HRTF see that the current Electoral Boundaries does not favour women candidates as it makes it more difficult for any woman to compete with a male candidate for one seat per constituency. It is even more difficult when there is a lack of support from political parties for women candidates. Hence working towards achieving gender equality in Parliament is far from a reality.
8. The Constitutional and Electoral Reform Commission (CERC) failed the Women in Tonga by not considering their submissions and recommendations for TSM to address low representation of women in Parliament. The water-shed democratic reforms that took place prior to the 2010 general elections blatantly disregarded the plight of women in Tonga's patriarchal-political history, and that if we are to see a more meaningful form of democracy with an electoral system that takes this into account, than there needs to be a legal framework in place that creates special measures for women's representation in Parliament. Unless this is achieved, electoral processes will continue to be driven by patriarchal legal frameworks and a supposedly new democracy that continues to fail her women.
9. Parliament approved in August 2016 a motion for 2 reserve seats for women however CSO HRTF is concerned that the 2 seats (7%) recommended is low compared to UN standard and best practices of 30%.

10. Recommendations for Thematic Area One:

The CSO HRTF calls on the Government of Tonga to:

- (i) Consider reviewing the nine allocated seats for the nobles and the law to allow the people to elect nobles' rather than nobles only electing their representatives as they only represent a minority of the population.
- (ii) Consider reviewing the general maturity age of the common people and the nobles to be in line with the maturity age of the King at 18 years of age and the CRC and to align other laws that make reference to maturity age accordingly
- (iii) Repeal the section on the Births, Deaths and Marriage Registration Act 1926 that allows for children to marry at ages 15 – 17 years to raise the age to 18 years.
- (iv) Consider abolishing the remuneration package assigned for the nobles.
- (v) Consider returning to the previous electoral districts.
- (vi) Legalise local councils who will then be given constituency development funds to administer.
- (vii) Consider an affirmative action to set up temporary special measures (TSM) to advance women participation in Parliament for the 2018 general election.

Thematic Area Two: Human Rights Issue (prevention of torture, freedom of expression, disabilities, anti-corruption)

Prevention of torture

11. There are a number of Acts that still direct the practice of torture in Tonga and examples of such Acts against children are listed.
12. The first is the Magistrates' Courts Act stipulates that for any young male between the ages of 7 and 14, the court can order a constable or sergeant of police to whip them for any criminal offence. This whipping is to be carried out with a light rod or cane made up of several tamarind or other twigs for a maximum of 10 strokes in one session or up to 20 strokes altogether. In the Criminal Offences Act, parallel punishment is found for male persons under 16 years of age. For males aged 16 to 17 years, their punishment is carried out 'with a cat of pattern' which Cabinet deems fit.
13. The second is Evidence Act which states that any male child can be whipped if he 'wilfully gives false unsworn evidence to a court'.
14. The third is the Manufacture of Intoxicating Liquor Act asserts that a maximum of 10 strokes with a light rod or cane can be given to any male under the age of 18 who is found guilty of unlicensed intoxicating liquor.
15. The fourth is the Order in Public Places Act affirms that if any male under the age of 14 is found after 8:30pm in any public amusement or public place of any kind and is without an adult guardian or parent he may be whipped. Also males under the age of 16 may also be whipped if condemned for smoking tobacco, drinking kava or spotted in any public billiard saloon.
16. The fifth is the Town Regulations Act which states that any able-bodied male person older than 16 years may be liable to be whipped if the police sees that he is unemployed, does not have a plantation and cannot find a means to support those who depend on him.

17. The final one is the Criminal Offences Act which state that crimes of murder and treason may be punished by sentence of death and such sentence shall have the approval of the King with the consent of Privy Council. The death penalty shall not be imposed on pregnant women or those under 15 years of age and its executed in the form of hanging by the neck. The United Nations General Assembly has Resolutions to the effect of a UN moratorium on death penalty and Tonga's position has always been against it.

Freedom of Information

18. Government ongoing Public Sector Reform has seen a number of Government Ministries amalgamated to one Ministry with inconsiderate capacity of managing different functions. The former Ministry of Information and Communications is now merged with other departments to form the Ministry of Meteorology, Energy, Information, Disaster Management, Environment, Climate Change and Communication. This means that the Freedom of Information initiative is competing with other priorities in such a large Ministry and this is reflected in the Freedom of Information Policy still being in draft form since it was launched in June 2012.
19. Another recent set back was the controversial debate on the role of the Tonga Broadcasting Commission as a State Enterprise and expected to represent supporting views of the Government of the day. Tonga Broadcasting Commission as a media institution regardless of its ownership. Its status should be independent of Government and freedom of information is one of the core values of its existence.

Anti-corruption

20. Tonga passed the Anti-corruption Act in 2007 which authorizes the establishment of an Anti-corruption commission to deal with corruption in government; however government declared that the Act cannot be implemented due to financial constraints. This has raised public concern that it is not a priority for government since the current focus is on economic development. However, according to a report of Ministry of Communication and Information, Tonga is considering accession to the UN Convention against Corruption (UNCAC). Since the last review, the implementation of the Act to establish an Anti-Corruption Commission has been delayed with diversion of interest in setting up of the Parliament Anti-corruption Standing Committee. However, the former Public Relations Commission has been incorporated into the new Ombudsman Commission with the role to investigate and report on complaints on public services and performance of the public servants and this limits the other sectors of the society.

Right to Justice

21. The MV *Princess Ashika*, an inter-island ferry which operated in Tonga in August and July of 2009 sank and killed 74 persons at sea. All women and children passengers lost their lives. We reported this in the 2nd UPR Cycle but there were no recommendations or references made to this horrific tragedy caused by a government vessel. It is the utmost responsibility of the government to protect the life of its people and this is shown clearly in Clauses 14 of the Constitution, the Right to Life and also Clause 18 which stipulates that all the people have the right to expect that the Government will protect their life liberty and property.

Legal Aid

22. A legal aid policy was endorsed by the Ministry of Justice (MOJ) following the November 16th 2006 riots to assist those who needed legal advice and support, however the project has since ceased and there have been no attempts to revive legal aid support in Tonga in the last two years. Government approved joint partnership RRRT and Ministry of Justice to set up Community legal aid centre for domestic violence/justice for women – access to justice.

23. Recommendations for Thematic Area Two :

The CSO HRTF calls on the Government of Tonga to:

- (i) Ratify the UN Convention Against Torture and review all the Acts that direct the practice of torture as penalties as they go against CRC and justice for all in Tonga.
- (ii) Implement the recommendations highlighted in the Commission's Report on the death of 94 Tongan citizens and foreigners on a government owned vessel, the M.V. Princess Ashika and for Government to ensure that all victims have access to effective legal remedy
- (iii) Implement the Anti-Corruption Commission and to ensure Anti-Corruption Commission is independent of Government.
- (iv) Ensure that the Freedom of Information Policy develops into a Freedom of Information Act.
- (v) Revive legal aid support particularly for the most vulnerable members of the community who lack access to financial resources and technical legal advice based on their low income and economic status

Thematic Area Three: National Human Rights Institution

24. There is no human rights institution in Tonga. There is no national body to monitor human rights violations and to document the same. The CSO HRTF acknowledges the importance of having such a national body as it can act as a coordination body that will oversee all HR issues within the country. It can also help to closely monitor UPR recommendations for Tonga.
25. At the same time, we note that the Government lacks the resources and technical skills to set up a national human rights institution. It will also take time to set up. Therefore, we support the idea of establishing a National Human Right Institution that operates independently and will allow sharing of expertise and resources with other International Human Rights Agencies and Governments.

26. Recommendation for Thematic Area Three:

- (i) The CSO HRTF recommend to Government to prioritize the establishment of a National Human Rights Institution

Thematic Area Four: Gender Equality

- 27. Tonga has committed itself to the following international/regional gender equality conventions /agreements: Beijing Platform for Action of Women (Sep 1995), Global Sustainable Development Goals (2016-2030), Commonwealth Plan of Action for Gender Equality 2005-2015 and the Revised Pacific Platform of Action for Gender Equality 2005-2015. Pacific Leaders Gender Equality Declaration (2012), UN Sustainable Development Goals (SDGs) to be achieved by 2030 (2015).
- 28. The *Constitution of Tonga* prohibits discrimination based on class, religion, race but does not recognize discrimination based on gender.
- 29. The National Policy on Gender and Development (GAD) was formulated in 2001, and revised in 2014 but face the common challenge of budget constraints that limits the capacity of implementation. However, Government commitment to the Global Sustainable Development Agenda 2030 has reinforced the need to translate SDG 5 on Gender Equality to local policies and national strategic development framework. Tonga Strategic Development Framework in Pillar 2 – Social Institutions, Organisational Outcome 2.1 (e) stipulated to improve gender equality by implementing the government’s development policy and ensuring a more balanced and effective engagement by both men and women in decision making in social, economic and political institutions.
- 30. In 2015, a major breakthrough was on the verge of being realized when the Government of Tonga stated at the 59th session of the Commission on the Status of Women in New York that it was ready to commence the process of ratifying the UN Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW). That realization has been put on hold by the decision of the King in Privy Council that claimed that Government to ratify CEDAW is unconstitutional. It articulated that Clause 39 of the Constitution states that only the King can make treaties. A Judicial Review is necessary to clarify these claims in order for Government to move forward with the ratification of CEDAW.
- 31. Progress has been made since the last review where more women are in leadership and decision making roles as Government CEOs and Executive Board Directors. However, this is yet to be translated to local government and high decision making institutions such as Cabinet, Parliament and Judiciary – there are no female magistrates.
- 32. Since 1951 when women were first given the right to vote and stand as candidates there have only ever been 5 elected women into Parliament to date. In recognition of the SDG 5.5, a motion was approved by Parliament for 2 special seats for women.
- 33. There is no official system for supporting female workers with the exception of maternity leave for public servants as per Public Service Act. In the Private Sector however there is no legislation that ensures the welfare of female workers including maternity leave.
- 34. There is no minimal wage law. Over the last 30 years, the number of females in formal employment has increased almost fourfold. However, there has been little progress in the type

of occupations that women are engaged in. Most women were and still are employed in unskilled menial work or subordinate positions and therefore are paid at the lower end of the scale.

35. An employment relation bill has been discussed in the last 30 years. Progress has been made since Tonga became member of the International Labour Organisation (ILO) in February 2016 and a National Tripartite Committee consists of Government, Employer and Workers was established in May of this year. Government has approved budget allocation this financial year to undertake final consultation on the Employment Relation Bill before submission to Parliament in 2018.
36. It was highlighted in the previous review the inadequacy of the law on violence against women hence the enactment of the Family Protection Act in 2013 was considered a milestone, aiming to provide greater protection for victims of domestic violence.
37. The law on sexual offences defines rape as the unpermitted penetration of the penis into the vagina, and as such any other type of sexual abuse is not regarded or recognized as an offence. For example using objects or anal methods is not regarded as rape but rather sexual assault, having a lesser charge.
38. The Government of Tonga, despite limited resources, made modest progress in its law enforcement efforts to address human trafficking. Tonga prohibits all forms of human trafficking through its Revised Transnational Crimes Act of 2007, which defines human trafficking as including forced labor and forced prostitution. Tonga should be a party to the 2000 UN TIP Protocol and should revise the Act to protect victims of trafficking.
39. All operations made at the hospital in Tonga whether it be for a male or female has to be authorised by the parents and husband for wife.
40. It was reported in the last review the report of the Royal Land Commission released in 2012 with recommendations to increase women's rights to land, more specifically for women to be allowed to register a town allotment. However this recommendation does not allow women to register bush allotments with the reason being that only men attend to the bush for agricultural purposes. Despite attempts to recommend amendments to afford women more access and rights to land, this is an area where women continue to be economically deprived and disempowered.

41. Recommendations for Thematic Area Four:

The CSO HRTF calls on the Government of Tonga to:

- (i) Include gender as a ground to prohibit discrimination in the Constitution of Tonga
- (ii) Prioritize gender equality within the Tonga Strategic Development Framework with adequate budget commitments.
- (iii) Undertake a Judicial Review on Privy Council Decision with respect to determining whether CEDAW is a Treaty or Convention and subsequently the ratification of CEDAW.
- (iv) Establish policies to increase women's participation at all formal decision making levels and to enact Temporary Special Measure (TSM) legislation to address low participation of women in Parliament.
- (v) Enact the Employment Relation Bill to ensure the protection of workers welfare including minimum wages and ratify the 8 core conventions of the ILO and the

International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families.

- (vi) Accede to the 2000 UN TIP Protocol and consider revising the Transnational Crimes Act to ensure protecting the rights of victims of trafficking
- (vii) Revise the reproduction health policy to allow women to decide the course of contraception best for them.
- (viii) Review the Constitution and the Land Act to allow women to own land.
- (ix) Review the Marriage Act and repeal section where it provides that 15 and 17 year olds can marry with the consent of a parent or a legal guardian.
- (x) Review the Criminal Law to include the use of objects, anal and digital penetration as forms of rape.

Thematic Area Five: Promotion and protection of human rights, education and public awareness

- 42. There are increasing concerns that the Government of Tonga and its line ministries have not consolidated a commitment to provide Human Rights training for the public officials.
- 43. Churches as social institutions can play a critical role in advancing the protection of human rights in Tonga. They need to understand what Human Rights is so that they do not see it as an un-Godly right. Most church pastors see human rights as a personal issue that goes against God's will. It is therefore imperative that Human Rights training be provided for them too. Since they are very influential in the country, they need to be well informed on human rights issues.
- 44. The Ministry of Education still has not incorporated Human Rights into the school syllabuses of all levels. The new Family Protection Act 2013 has in its recommendations that the Ministry of Education mainstream human rights and gender into the syllabus but to date, nothing has been done about this.
- 45. There is an increasing demand for Human Rights training with recognition the key role played by members of the CSO HRTF in providing Human Rights training as part of their mandates: The Ma'a Fafine mo e Famili (MFF), The Tonga Crisis Centre for Women and Children (WCCC), Talitha Project, Tonga Leiti's Association and the Civil Society Organisation of Tonga.
- 46. There is increasing concerns of bullying Lesbian, Gay, Bisexual and Transgender (LGBT) Students in schools and within their own families. The Ministry of Education as well as other line Ministries are usually hesitant to implement any policy or changes or measures to promote and protect the human rights of LGBT students.
- 47. The increasing economic pressure of families at lower income level has forced the parents to engage their children in child labour activities. This is evident in children as young as six years old wandering the streets of the capital every night selling peanuts. Others are selling Tongan handicrafts and food. There is only one truancy officer in the Ministry of Education but there is an urgent need for more officers. The Ministry of Police is not doing anything about this too as they do not see that the children are committing a crime. Tonga lacks legislation to protect child labour.

48. Recommendations for Thematic Area Five:

The CSO HRTF calls on the Government of Tonga to:

- (i) Incorporate Human Rights and gender into the school syllabus.
- (ii) Provide Human Rights training for the Government officials and especially for the senior police and army personnel.
- (iii) Make readily available to students information on LGBT in all schools in Tonga.
- (iv) Enforce anti-bullying on LGBT students as it is as much a priority as any other issue.
- (v) Raise public awareness and education on UN Human Rights Conventions including Church Leaders.
- (vi) Ratify the ILO Convention on Child Labour and enactment of the Employment Relation Bill which includes migrant workers.

Thematic Area 6: Treaty ratifications, treaty reporting and overall work with human rights institutions

49. The CSO HRTF notes that of the core UN human rights conventions, The Government of Tonga has ratified a few conventions to date; the UN Convention on the Elimination of Racial Discrimination (CERD), the UN Convention on the Rights of the Child (CRC) and have become a signatory to the UN Convention on the Rights of Persons with Disabilities (CRPD)
50. We note that to date the government has still not ratified the leading women's rights convention, the UN Convention on the Elimination of all Forms of Discrimination Against Women (CEDAW) and its Optional Protocol and the UN Convention Against Torture (CAT) and its Optional Protocols and the two core critical human rights Covenants the International Covenant on Economic, Social and Political Rights (ICESCR) and the International Covenant on Civil and Political Rights (ICCPR) and its Optional Protocol and the Optional Protocols to CRC
51. The CSO HRTF notes with concern that since the last UPR review in 2012, the Government has failed to make positive steps towards the ratification of the latter conventions and covenants mentioned above

52. Recommendations for Thematic Area Six:

The CSO HRTF calls on the Government of Tonga to:

- (i) Immediately ratify the following; CEDAW (Convention on the Elimination of all forms of Discrimination Against Women) and CRPD (Convention on the Rights of Persons with Disability)
- (ii) Fulfill its commitment to reporting on CRC and CERD and to work towards developing implementation plans for CRC, CERD , CEDAW and CRPD
- (iii) Consider ratifying the other human rights instruments to which Tonga is not a party
- (iv) Undertake a Judicial review to clarify clause 39 of the Constitution and to declare where the responsibility and authority lies in terms of ratification of treaties which includes conventions – Privy Council stated that it was not persuaded that the process followed by the Government is in accord with the Constitution.