Committee on the Elimination of Discrimination against Women

Concluding observations on the combined third and fourth periodic reports of Tuvalu*

1. The Committee considered the combined third and fourth periodic reports of Tuvalu (CEDAW/C/TUV/3-4) at its 1283rd and 1284th meetings, on 20 February 2015 (see CEDAW/C/SR.1283 and 1284). The Committee’s list of issues and questions is contained in CEDAW/C/TUV/Q/3-4 and the responses of Tuvalu are contained in CEDAW/C/TUV/Q/3-4/Add.1.

A. Introduction

2. The Committee appreciates that the State party submitted its combined third and fourth periodic reports. It also appreciates the State party’s written replies to the list of issues and questions raised by the pre-sessional working group and welcomes the oral presentation by the delegation and the further clarifications provided in response to the questions posed orally by the Committee during the dialogue. The Committee regrets, however, that the answers to some questions were not sufficiently precise and that some questions were left unanswered.

3. The Committee commends the State party on its delegation, which was headed by the Senior Assistant Secretary in the Office of the Prime Minister, Puaita Etuati, and also included representatives of the Office of the Attorney General, the Gender Affairs Department, the Ministry of Health and the Ministry of Education.

4. The Committee takes note of the fact that the State party is exposed to environmental threats, including coastal erosion and rising sea levels as a result of climate change, as well as natural disasters.

* Adopted by the Committee at its sixtieth session (16 February-6 March 2015).
B. Positive aspects

5. The Committee welcomes the progress achieved since its consideration in 2009 of the State party’s combined initial and second periodic reports (CEDAW/C/TUV/2) in undertaking legislative reforms, in particular the adoption of the following:

(a) Family Protection and Domestic Violence Act (2014), which prohibits and provides enhanced protection for women and girls from domestic violence;

(b) Falekaupule (Authorization of Budget) Amendment Act (2014), which allows women aged 18 and above residing within the territorial jurisdiction of the local government council to participate and vote in the approval stages of the council’s budget;

(c) Police Powers and Duties Act (2009), which includes a definition of domestic violence and specifies the responsibilities of the police in cases of domestic violence;

(d) Counter-Terrorism and Transnational Organized Crime Act (2009), which defines and prohibits all forms of exploitation, including of prostitution, as well as trafficking in persons.

6. The Committee welcomes the State party’s efforts to improve its institutional and policy framework aimed at accelerating the elimination of discrimination against women and promoting gender equality, such as the adoption of the following:

(a) National Gender Policy (2014) and its Strategic Plan of Action 2014-2016, which are aimed at achieving the progressive realization of women’s human rights in all aspects of life;

(b) National Strategic Plan for HIV and Sexually Transmitted Infections 2009-2013, which is aimed at reducing the transmission of HIV and other sexually transmitted diseases.

7. The Committee welcomes the fact that, since its consideration of the previous report, the State party acceded to the Convention on the Rights of Persons with Disabilities in 2013.

C. Principal areas of concern and recommendations

Parliament

8. The Committee stresses the crucial role of the legislative power in ensuring the full implementation of the Convention (see the statement by the Committee on its relationship with parliamentarians, adopted at the forty-fifth session, in 2010). It invites Parliament, in line with its mandate, to take the necessary steps regarding the implementation of the present concluding observations between now and the next reporting period under the Convention.

Status of the Convention

9. The Committee is concerned that, although ratified in 1999, the Convention has not yet been fully incorporated into the national legal order, given that...
international treaties need to be incorporated into national law before they can be applied by the national courts.

10. The Committee calls upon the State party to proceed without delay with the full incorporation of the Convention into its national legal order.

Constitutional framework and discriminatory laws

11. The Committee notes with concern that the State party has taken no steps to amend its Constitution with a view to incorporating the principle of equality of women and men and defining and prohibiting all forms of discrimination on the grounds of sex or gender, including direct and indirect discrimination, in line with article 1 of the Convention, and covering acts of both public and private actors, in accordance with article 2.

12. The Committee reiterates its previous recommendation (CEDAW/C/TUV/CO/2, para. 14) and calls upon the State party to give central importance to the Convention as the basis for the elimination of all forms of discrimination against women and the achievement of gender equality. It recommends that the State party amend section 27 (1) of its Constitution as well as other appropriate legislation to incorporate fully and without delay the principle of equality between women and men, as well as a prohibition of discrimination on the basis of sex or gender, in line with the definition provided in article 1 of the Convention, that covers the public and private spheres, in accordance with article 2 of the Convention.

13. While taking note of the statement made by the delegation of the State party during the dialogue that a review of discriminatory laws is currently being discussed, the Committee remains seriously concerned that sex-discriminatory provisions continue to exist in the Constitution, the Penal Code of 1978, the Native Lands Act of 1956, the Marriage Act (Cap. 29), the Tuvalu Lands Code of 1962, the Falekaupule Act of 1997 and the Employment Act of 1966.

14. The Committee reiterates its previous recommendation (CEDAW/C/TUV/CO/2, para. 16) and recommends that the State party conduct a holistic review of its legislation and adopt a clear time frame and targets in relation to the law reform process, and amend or repeal all discriminatory legislation mentioned above in order to ensure compatibility with the principle of equality and non-discrimination as enshrined in the Convention. The Committee further encourages the State party to generate the political will necessary to undertake those reforms and to raise the awareness of legislators, policymakers and the public about the importance of gender equality.

Access to justice

15. The Committee welcomes the fact that the judiciary, in particular the Senior Magistrate and his court, visits the outer islands to hear pending cases. It remains concerned, however, about women’s limited access to justice, in particular on the outer islands, and the difficulties that they face in obtaining effective remedies and redress in the courts, owing to, among other things, customary laws and practices, local and geographical barriers, a lack of information about their rights and limited access to legal assistance. The Committee takes note of the information provided by the State party regarding a significant increase in the number of women gaining access to the Office of the People’s Lawyer, the main agency providing legal aid, since the appointment of a woman to that office. It remains concerned, however,
about the lack of financial and human resources of the Office. It is also concerned that the State party lacks a comprehensive and effective system for receiving complaints, and it regrets the lack of disaggregated data on complaints filed by women and their outcomes.

16. The Committee recommends that the State party:

(a) Set up a complaint mechanism to ensure that women have effective access to justice and collect data on the number of complaints filed by women, the types of complaint received and their outcomes;

(b) Establish specific remedies to provide redress for women in the justice system and raise public awareness of the importance of addressing violations of women’s rights through judicial remedies;

(c) Strengthen the justice system, including the Office of the People’s Lawyer, by enhancing its human, financial and technical resources, deploy judges and legal practitioners to the outer islands and ensure the provision of free legal aid to women without sufficient means to claim their rights;

(d) Enhance women’s awareness of their rights and the means to enforce them, including by strengthening cooperation with civil society organizations, in particular community-based women’s associations.

National machinery for the advancement of women

17. The Committee notes with appreciation that the Department of Women’s Affairs, which was renamed the Gender Affairs Department, has been shifted from the portfolio of the Minister of Home Affairs to that of the Prime Minister and given additional human and financial resources. Nevertheless, the Committee remains concerned that the Department continues to depend heavily on international partners for technical assistance and financial support and lacks the institutional authority, capacity and appropriate resources to effectively monitor and coordinate the implementation of the Convention and the National Gender Policy.

18. The Committee encourages the State party:

(a) To expeditiously strengthen the Gender Affairs Department by providing it with adequate human, financial and technical resources in order to coordinate and work effectively for the promotion of gender equality and gender mainstreaming in all policies and programmes across all sectors and levels of the Government;

(b) To strengthen its impact assessment mechanisms so as to ensure that its gender equality policies are properly monitored and evaluated and their implementation assessed.

Stereotypes and harmful practices

19. The Committee acknowledges the importance in daily life of the culture and traditions of the State party and notes that some gender sensitivity training and awareness-raising activities have been conducted through radio programmes and workshops to reach out to the communities in the capital and on the outer islands. The Committee is concerned, however, at persisting gender stereotypes, negative traditional values and patriarchal attitudes regarding the roles and responsibilities of
women and men in society and in the family that overemphasize women’s roles as mothers and housewives, thereby preventing them from actively participating in all aspects of public life as covered by the Convention.

20. The Committee urges the State party:

(a) To put in place, without delay, a comprehensive strategy to modify or eliminate patriarchal attitudes and stereotypes that discriminate against women, in conformity with the provisions of the Convention. The strategy should include education and awareness-raising campaigns targeting women and men at all levels of society, including chiefs, island leaders and religious leaders, and focus particular attention on the recognition of the value and dignity of women, their empowerment and their participation in decision-making processes in the community and society at large. The strategy should engage civil society organizations and the mass media to combat negative stereotypes and discriminatory social attitudes towards women;

(b) To adequately integrate principles of non-discrimination and equality of women and men into educational policies, the national core curriculum and related documents, as well as into basic and continuing education for teachers and health-care professionals and other service providers;

(c) To use innovative measures that target children and adults to strengthen their understanding of the principle of equality of women and men, and to work through the educational system, both formal and informal, as well as with the mass media, to enhance positive and non-stereotypical portrayals of women;

(d) To monitor and review the measures thus taken in order to regularly assess their impact and take appropriate remedial action.

Violence against women

21. The Committee welcomes the adoption of the Police Powers and Duties Act (2009) and the Family Protection and Domestic Violence Act (2014). It also notes the information provided by the State party during the dialogue that an action plan for the implementation of the latter will be developed following the general elections of March 2015. It further welcomes the establishment of a domestic violence unit. The Committee is concerned, however, about:

(a) The persistence of violence against women, including domestic violence, and the insufficient information about its extent and prevalence;

(b) The fact that such violence would appear to be socially legitimised and accompanied by a culture of silence and impunity, owing to women’s reluctance to report such cases out of fear of reprisals, stigmatization and inadequate response by the police;

(c) The lack of a comprehensive framework for addressing all forms of violence against women, including domestic and sexual violence;

(d) The absence of provisions criminalizing marital rape in the Penal Code;

(e) The absence of shelters and the limited availability of medical care, psychosocial counselling and legal assistance for victims.
22. The Committee reiterates its previous recommendation (CEDAW/C/TUV/CO/2, para. 30) and urges the State party:

(a) To expedite the adoption of an action plan for the implementation of the Family Protection and Domestic Violence Act, provide sufficient human and financial resources in that regard and enhance cooperation with civil society organizations for its effective implementation;

(b) To design and implement legislative and other comprehensive measures to prevent and address all forms of violence against women and girls, including domestic violence and sexual violence, and ensure that women and girls who are victims of violence have access to effective means of redress and protection and that perpetrators are prosecuted and punished, in accordance with the Committee’s general recommendation No. 19 on violence against women;

(c) To amend the Penal Code and the Family Protection and Domestic Violence Act to define and criminalize marital rape, in line with the Convention and the Committee’s general recommendation No. 19;

(d) To provide mandatory training for judges and prosecutors on the strict application of legal provisions criminalizing violence against women and train police officers on gender-sensitive procedures to deal with victims of violence;

(e) To encourage women to report incidents of sexual and domestic violence by destigmatizing victims and raising awareness about the criminal nature of such acts;

(f) To establish shelters, including on the outer islands, provide adequate protection and assistance to women who are victims of violence and enhance cooperation with non-governmental organizations, in particular women’s organizations, that are providing assistance and rehabilitation services to victims;

(g) To collect statistical data on the number of complaints, prosecutions and convictions with respect to sexual and domestic violence, disaggregated by sex, age, nationality and relationship between the victim and the perpetrator, and establish a monitoring and evaluation mechanism in order to regularly assess the impact and effectiveness of measures aimed at preventing, addressing and redressing violence against women.

Participation in political and public life

23. From 2012 to 2014, the number of women holding the position of Assistant Secretary increased from 20 per cent to nearly 50 per cent. While noting that increase, as well as the slight increase in the representation of women at the island council level, the Committee remains concerned about the stark underrepresentation of women in political and public life, especially at the highest levels of decision-making (currently there is one woman parliamentarian and one woman minister); local government, including decision-making bodies (Falekaupule) and island councils (Kaupule); the judiciary; and the diplomatic service. The Committee is further concerned that systematic barriers such as negative cultural attitudes, the lack of an adequate quota system, insufficient capacity-building for potential
women candidates, limited financial resources and the lack of logistical support impede the equal participation of women in political life.

24. The Committee recommends that the State party:

(a) Adopt, as a matter of priority, targeted measures, including targeted training, capacity-building, gender-sensitive recruitment and temporary special measures, to increase the percentage of women in appointed senior and management positions in the judiciary, the Government and the public and foreign service, in line with the Committee’s general recommendation No. 23 on women in political and public life;

(b) Consider enacting legislation to reserve at least 30 per cent of parliamentary seats for women, in accordance with article 4 (1) of the Convention, the Committee's general recommendation No. 23 and the Committee’s general recommendation No. 25 on temporary special measures;

(c) Provide training for women, including on the outer islands, on leadership and management skills, campaigning and constituency-building to prepare them as candidates and for positions in political life and the various areas of public administration;

(d) Conduct awareness-raising campaigns for politicians, journalists, teachers and community leaders, especially men, on temporary special measures as a necessary strategy for accelerating the realization of women’s substantive equality, as well as to enhance the understanding that the full, equal, free and democratic participation of women on an equal basis with men in political and public life is a requirement for the full implementation of the Convention.

Education

25. The Committee notes the information provided by the State party that the overall net enrolment rate of girls in education is higher than that of boys. The Committee also notes the efforts made by the State party to provide vocational and skills development courses and training for girls and boys as from primary school. The Committee further takes note of the inclusion of family life education in the curriculum of science subjects. The Committee is concerned, however, about:

(a) Traditional views of pupils and teachers orienting girls towards areas of study perceived as appropriate to their social roles and participation in public life;

(b) The dismissal of pregnant girls from school and the absence of re-entry policies after giving birth;

(c) The lack of data disaggregated by school, age and sex on school “push outs” (i.e., pupils who did not pass the secondary entrance exam);

(d) The apparent limited treatment of the family life education programme by its integration into science subjects;

(e) The inadequate education infrastructure affecting girls in particular, including the lack of basic sanitary facilities.
26. The Committee calls upon the State party to raise awareness of the importance of education as a human right and the basis for the empowerment of women. To that end, it calls upon the State party:

(a) To eliminate traditional stereotypes and structural barriers that may deter girls from enrolling in traditionally male-dominated fields of study, such as science and technology, and step up efforts to provide girls with career counselling on non-traditional career paths;

(b) To strengthen efforts to retain girls in school, facilitate the return to school of young mothers after giving birth by providing adequate childcare facilities and ensure that girls are not expelled from school because they are pregnant and impose appropriate sanctions on those responsible for any such dismissals;

(c) To implement the Tuvalu Education, Monitoring and Information System to monitor school “push outs” and provide girls with alternatives outside formal education, including non-stereotypical vocational training;

(d) To continue to develop and promote age-appropriate education on sexual and reproductive health and rights and responsible sexual behaviour for girls and boys as an intact subject in the school curricula at all levels and in all fields of education;

(e) To consider increasing the percentage of the budget allocated to education and improve sanitation facilities at schools by providing separate latrines for girls, increasing the number of dormitories for girls and providing affordable school transport, especially in remote areas.

Employment

27. The Committee notes as positive the elaboration of a labour bill that contains provisions prohibiting direct and indirect discrimination on the basis of, among other things, sex, pregnancy, marital status or family responsibilities. It is concerned, however, that the State party has ratified none of the fundamental conventions of the International Labour Organization and that the revised Employment Act of 2008 still discriminates against women with regard to maternity leave and free choice of employment. The Committee also regrets the lack of updated disaggregated statistical data on the participation of women in the labour market.

28. The Committee recommends that the State party:

(a) Give priority to the adoption of the labour bill within a specific time frame;

(b) Consider ratifying the fundamental conventions of the International Labour Organization, in particular the Discrimination (Employment and Occupation) Convention, 1958 (No. 111), the Maternity Protection Convention (Revised), 1952 (No. 103), and the Workers with Family Responsibilities Convention, 1981 (No. 156);

(c) Adopt temporary special measures to eliminate both vertical and horizontal occupational segregation;
(d) Develop a system to compile disaggregated data on the participation of women in the labour market, including in managerial positions.

Health

29. The Committee commends the State party for improving access to health care for those on the outer islands by establishing health centres on all those islands with professional health personnel, including trained midwives, and for considerably reducing maternal mortality as a result of improved detection services regarding high-risk pregnancies. Nevertheless, the Committee remains concerned:

(a) That women, in particular on the outer islands, continue to experience difficulties in gaining access to affordable and adequate health care and, especially, that the health centres on the outer islands are not sufficiently equipped to attend to deliveries in the event of complications;

(b) That abortion is still criminalized under the Penal Code in cases of rape, incest, risk to the life or health of the pregnant woman or severe foetal impairment and that the prohibition may lead women to seek unsafe, illegal abortions, thereby endangering their life and health;

(c) That there is a lack of preventive sexual and reproductive health services, including age-appropriate school education on sexual and reproductive health and rights, and that the use of contraceptives by girls and boys is reportedly very low, resulting in a heightened risk of HIV/AIDS, sexually transmitted diseases and early pregnancy.

30. In line with its general recommendation No. 24 on women and health, the Committee recommends that the State party:

(a) Ensure that obstetric health services for women, including prenatal and postnatal services, are available throughout the territory of the State party, including on the outer islands;

(b) Decriminalize abortion in cases of rape, incest, risk to the life or health of the pregnant woman or severe foetal impairment, in line with the Committee's general recommendation No. 24, and ensure that women and girls have confidential access to adequate post-abortion care;

(c) Ensure free access to modern contraceptive methods for all Tuvaluan women, including those living on the outer islands, as part of the policy on free health care, and strengthen age-appropriate school education on sexual and reproductive health and rights for adolescent girls and boys;

(d) Provide free and confidential family planning at the community level, including on the outer islands, and educate women and girls as well as men and boys on responsible sexual behaviour and the prevention of early pregnancy and sexually transmitted diseases.
Impact of climate change and natural disasters on women

31. The Committee recalls the vulnerability of the State party to serious environmental and climate change, as mentioned in paragraph 4 above. In that regard, it is concerned:

(a) That the emigration of Tuvaluan citizens to neighbouring countries has considerably increased and that there is a risk of further internal or international displacement that would give rise to statelessness;

(b) That the impact of climate change, the rise in sea levels and other climate-related disasters affect rural women disproportionately, given that they rely heavily on access to natural resources for their daily survival;

(c) That there is little evidence that those affected, including women, have been informed of or given opportunities to participate in decision-making processes to mitigate the impacts of climate change and in policymaking relating to them.

32. The Committee reiterates its previous recommendation (CEDAW/C/TUV/CO/2, para. 56) that the State party:

(a) Develop disaster management and mitigation plans in response to potential displacement and/or statelessness arising from environmental and climate change and ensure that women, including those living on the outer islands, are included and may actively participate in planning and decision-making processes concerning their adoption;

(b) Ensure that a gender perspective is integrated into all sustainable development policies, as well as into disaster risk reduction, post-disaster management and climate change policies.

Marriage and family relations

33. The Committee notes the statement made by the delegation of the State party during the dialogue that a review of discriminatory laws regulating marriage and family relations is currently under discussion. Nevertheless, the Committee remains concerned:

(a) That the State party’s current land laws and its traditional and cultural land ownership system do not guarantee women equal rights to land ownership and inheritance;

(b) That, according to section 20 of the Native Lands Act, the custodial rights of a child born out of wedlock will automatically be given to the father if he accepts paternity once the child has reached 2 years of age;

(c) That the minimum legal age for marriage remains 16 years.

34. The Committee urges the State party:

(a) To amend or repeal all discriminatory provisions in the Native Lands Act and the Tuvalu Lands Code to ensure that women have equal rights to land ownership and land inheritance;

(b) To eliminate discriminatory customs and traditional practices that affect the full enjoyment of women’s land and inheritance rights, including by
ensuring that local customary leaders and magistrates in the Lands Court are trained to uphold women's land rights at the community level;

(c) To amend section 20 of the Native Lands Act concerning custody of children born out of wedlock in favour of the mother, bearing in mind the welfare and best interests of the child;

(d) To raise the minimum age of marriage to 18 years for girls and boys in accordance with joint general recommendation No. 31 of the Committee on the Elimination of Discrimination against Women/general comment No. 18 of the Committee on the Rights of the Child on harmful practices;

(e) Complete its legal reform in the area of family law within a specific time frame, and ensure that both spouses have equal rights and responsibilities during marriage and in the event of its dissolution, in line with article 16 of the Convention and the Committee's general recommendation No. 29 on article 16 (economic consequences of marriage, family relations and their dissolution).

Data collection and analysis

35. The Committee is concerned at the general lack of data disaggregated by sex, age, race, ethnicity, geographical location and socioeconomic background in the areas covered by the Convention, which are necessary to assess the situation of women, for informed and targeted policymaking and to systematically monitor and evaluate progress achieved towards the realization of substantive equality of women in all areas covered by the Convention.

36. The Committee calls upon the State party to implement systems of collection, analysis and dissemination of data disaggregated by sex, age, disability, race, ethnicity, geographic location and socioeconomic background and to use measurable indicators to assess trends in the situation of women and the progress achieved in the realization of substantive equality of women in all areas covered by the Convention. In that regard, it draws the State party’s attention to the Committee’s general recommendation No. 9 on statistical data concerning the situation of women and encourages it to develop gender-sensitive indicators that could be used in the formulation, implementation, monitoring, evaluation and, when necessary, review of gender equality policies.

Optional Protocol and amendment to article 20 (1) of the Convention

37. The Committee encourages the State party to ratify the Optional Protocol to the Convention and to accept, as soon as possible, the amendment to article 20 (1) of the Convention concerning the meeting time of the Committee.

Beijing Declaration and Platform for Action

38. The Committee calls upon the State party to use the Beijing Declaration and Platform for Action in its efforts to implement the provisions of the Convention.

Millennium Development Goals and the post-2015 development framework

39. The Committee calls for the integration of a gender perspective, in accordance with the provisions of the Convention, into all efforts aimed at the
achievement of the Millennium Development Goals and into the post-2015 development framework.

Dissemination

40. The Committee recalls the obligation of the State party to systematically and continuously implement the provisions of the Convention. It urges the State party to give priority attention to the implementation of the present concluding observations and recommendations between now and the submission of the next periodic report. The Committee therefore requests that the present concluding observations be disseminated in a timely manner, in the official languages of the State party, to the relevant State institutions at all levels (national, regional and local), in particular to the Government, the ministries, Parliament and the judiciary, to enable their full implementation. It encourages the State party to collaborate with all stakeholders concerned, such as employers’ associations, trade unions, human rights and women’s organizations, universities, research institutions and the media. It recommends that the present concluding observations be disseminated in an appropriate form at the local community level to enable their implementation. In addition, the Committee requests the State party to continue to disseminate the Convention, the Optional Protocol thereto and relevant jurisprudence, in addition to the Committee’s general recommendations, to all stakeholders.

Technical assistance

41. The Committee recommends that the State party link the implementation of the Convention to its development efforts and that it avail itself of regional or international technical assistance in that respect.

Ratification of other treaties

42. The Committee notes that the adherence of the State party to the nine major international human rights instruments would enhance the enjoyment by women of their human rights and fundamental freedoms in all aspects of life. The Committee therefore encourages the State party to consider ratifying the treaties to which it is not yet a party, namely, the International Covenant on Economic, Social and Cultural Rights; the International Covenant on Civil and Political Rights; the International Convention on the Elimination of All Forms of Racial Discrimination; the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment; the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families; the International Convention for the Protection of All Persons from Enforced Disappearance; and the Convention on the Rights of Persons with Disabilities.

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1 The International Covenant on Economic, Social and Cultural Rights; the International Covenant on Civil and Political Rights; the International Convention on the Elimination of All Forms of Racial Discrimination; the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment; the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families; the International Convention for the Protection of All Persons from Enforced Disappearance; and the Convention on the Rights of Persons with Disabilities.
Follow-up to the concluding observations

43. The Committee requests the State party to provide, within two years, written information on the steps taken to implement the recommendations contained in paragraphs 14 and 22 (a) and (c) above.

Preparation of the next report

44. The Committee invites the State party to submit its fifth periodic report in March 2019.

45. The Committee requests the State party to follow the harmonized guidelines on reporting under the international human rights treaties, including guidelines on a common core document and treaty-specific documents (HRI/GEN/2/Rev.6, chap. I).