

## TUVALU

### UNIVERSAL PERIODIC REVIEW

#### Submission of the TUVALU BRETHERN CHURCH

**Issue:** Freedom of Religion

**Thematic Area:** Justice and Law Reforms

**Recommendations:** 67/9, 67/10, 67/13 16<sup>th</sup> Session, 22 April to 3<sup>rd</sup> May, 2013.

#### Introduction

1. The Tuvalu Brethren Church (TBC) is a registered religious organization in Tuvalu. The fundamental belief of TBC is based around Christian principles and teachings of the Old and New Testaments. We believe in one God, eternally existing in three Persons: Father, Son and Holy Spirit.
2. TBC preaches Jesus Christ for the salvation of souls and teaches people to be good citizens of Tuvalu. TBC teaches their members to be supportive and active members of their respective islands.
3. This is the TBC's submission to the United Nations Human Rights Council, for consideration as a civil society report within the Universal Periodic Review mechanism. The report provides factual information of what had been implemented for recommendation 67/13 to convene the pending case in the Court of Appeal for Mr Mase Teonea versus Nanumaga Kaupule and recommendations 67/9 and 67/10. The report also raised TBC's concerns regarding the restriction on freedom of religion, freedom of beliefs and expression brought about by the changes to the constitution and legislation in Tuvalu. Recommendations to the Government relating to these concerns are listed at the final section of this report.

#### **Background of the Court of Appeal Case : Teonea versus Kaupule [2005] TVHC: 2 : HC CC No: 23 of 2003 (11 of October 2005).**

4. Nanumaga is one of the island in Tuvalu with 800 inhabitants. Mase Teonea who was born in Tuvalu but now a Fijian citizen, is a pastor of the Tuvalu Brethren Church came to Nanumaga with his wife and Sakaio Vaiafua in June 2003. Within a short period, 40 islanders were converted to the Brethren Church.

5. On 4 July 2003 the Falekaupule passed a resolution :

Resolution: No new religion or church is allowed to establish on the island except these already existing churches- the Seventh Day Adventist, Jehovah's Witnesses and Bahai faith.

This resolution had the effect of banning the Brethren Church from seeking converts on Nanumaga.

6. As a result of this resolution, Mr. Teonea commenced proceedings in the High Court against the Pule Kaupule and Nanumaga Falekaupule, seeking a declaration that the resolution of the Falekaupule was null and void as contrary to the Constitution. These proceedings came before the High Court on 6 October 2004 and 18 May 2005. In his judgment of 11 October 2005, the Chief Justice dismissed Teonea's application. As a result of the High Court judgment Mr. Teonea appealed to the Court of Appeal in May 2006.

7. The Court of Appeal eventhough is in the Constitution but it has never been convened in Tuvalu prior to 2005. The Human Right Council in 2008 recommended (Recommendation 67/13) the Tuvalu Government to convene the Court of Appeal in the interest of addressing the pending appeal to the High Court ruling of 2005 on the Case of Teonea v. Kaupule.

### **Implementation**

8. The Court of Appeal was convened in Tuvalu on 8 and 9 September 2009 before Tompkins JA, Fisher JA and Petterson JA . The judgment was delivered on 4 November 2009 in which the appeal is allowed, the judgment by the Chief Justice is set aside and declared that the Falekaupule Resolution of 4 July 2003 is contrary to the Constitution.

9. The appellant also sought relief for constitutional redress. The Court of Appeal reserved that relief to apply to the High Court.

10. Eventhough the Court of Appeal ruled in favor of Mr Mase Teonea, however it is not implemented in Tuvalu. Mr Teonea is still forbidden from travelling to Nanumaga Island, the TBC was still banned on Nanumaga and the High Court is yet to deliver it judgment regarding compensations for Mr Teonea.

### **Constitution and Legislative Changes**

11. Instead of implementing the decision of the Court of Appeal, the Parliament of Tuvalu enacted and passed a new bill called " Religious Organization Restriction Act (RORA)" during the parliament session on 13 August 2010.

12. The Religious Organization Restriction Act:

- restrict establishment of any religion on any island of Tuvalu unless it received approval from the island Falekaupule.

- the Falekaupule shall not withhold approval for establishment of any religion unless it is satisfied that the spread of beliefs and practices by the religious organization or association may directly threaten the values and culture of the island community.

- A Falekaupule may withdraw any approval granted for the establishment of a religious organization or association if satisfied that the beliefs and practices of the religious organization or association :

a) directly threaten the values and culture of the island community; or

b) divisive, unsettling or offensive to the people.

- A decision made by a Falekaupule shall not be questioned in any court of law.

- Any person who uses his premises for unauthorized religious gathering commits an offense and shall be liable upon conviction to a fine not exceeding \$500.

- Any person who attends or participate in any unauthorized gathering shall be liable upon conviction to a fine not exceeding \$200.

13. Before the Government hold authority for the establishment of any religion in Tuvalu, therefore all religious organization had to apply and registered at the Government Office. However the new RORA remove that authority from Government and vested it upon the respective islands Falekaupule.

### **Impact of Constitutional and Legislative Changes**

14. TBC saw this Religious Organization Restriction Act a Law enacted to defeat the ruling of the Court of Appeal.

15. It is an Act that directly going against the recommendations ( Recommendations : 67/9 and 67/10 and 67/13) by the Human Right Council during the Tuvalu UPR 2008.

16. TBC consider this new RORA a law that directly limited our freedom of religion, freedom of worship, freedom of beliefs and freedom of expression which were provided by the Tuvalu Constitution and United Nation Universal Declaration of Human Rights.

17. As a result of this new RORA, TBC received letters from Nanumaga and Funafuti islands Falekaupule informing us that our religion had been banned from establishing on their islands. The Funafuti Falekaupule explained our religious activities were in conflict with the island traditions and values. Nanumaga Falekaupule explained as a result of this new Act our religion was forbidden on their island.

18. The Act denies our right to religion, fairness and justice. Most of the people in Falekaupule were members of the biggest church in Tuvalu called the Ekalesia Kelisiano Tuvalu (EKT), so their decisions could always be biased. In addition, the majority of people in Tuvalu (especially those on the outer islands and sitting in the Falekaupule) were not educated or aware about basic human rights of a person. We doubt they consider human rights as important as declared by the United Nations Human Right Council. Their thinking and ideas were limited to island practice

and culture. Therefore they were not yet prepared or matured to decide on issues of international importance such as human rights and freedom of religion and worship. The new RORA forbid any opportunity for us to challenge the Falekaupule decision in any court of Law. In other word this Act provides an easy mechanism for Tuvalu to stop TBC from exercising their belief in Tuvalu.

19. TBC envisioned that eventhough TBC was established on most of the islands in Tuvalu, but due to this RORA more islands of Tuvalu would follow Nanumaga and Funafuti Falekaupule decisions to discontinue TBC from practicing their faith on their islands.

20. TBC regarded this Act directly discriminating against our fellow members.

21. The Court of Appeal was a medium provided under the constitution to serve justice to it citizens. However the events described above demonstrated that Tuvalu ignores the ruling of the Court of Appeal and instead provide a mechanism to defeat that ruling.

### **Recommendations**

22. TBC asked Government to implement the ruling of the Court of Appeal and to inform the public truly about the result of the Court of Appeal.

23. TBC asked the Government to remove completely the Religious Organization Restriction Act.

24. TBC request the Government of Tuvalu to remove all Laws that restrict freedom of religion and discriminations based on religion and beliefs.

25. TBC call upon the Government to return power for establishment of any religion in Tuvalu to the Government rather than on islands Falekaupule.

26. TBC calls upon the Government to ratify the ICCPR.

27. Tuvalu Brethren Church extends it appreciation to the Human Right Council for the opportunity to submit this report, and grateful for your consideration of our submission.