

ACCESS TO JUSTICE FOR CHILDREN: TUVALU

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I. What is the legal status of the Convention on the Rights of the Child (CRC)?

A. What is the status of the CRC and other relevant ratified international instruments in the national legal system?

Tuvalu¹ acceded to the CRC on 22 September 1995.² As at the date of this report, Tuvalu has not ratified or acceded to any of the Optional Protocols to the CRC.

Tuvalu adopts a dualist approach to international law and as a result ratified international instruments do not automatically have the force of law in Tuvalu.³ In order for ratified international instruments to have the force of law in Tuvalu, they must be incorporated into local law or administrative regulations via implementing legislation.⁴ Tuvalu has not incorporated the CRC into domestic law.⁵

B. Does the CRC take precedence over national law?

The CRC does not take precedence over national law.⁶ However, the terms of the CRC and other ratified international conventions may be invoked for the purposes of statutory interpretation.⁷ When used to construe the terms of an existing domestic law, the Tuvalu courts favour a construction of written law consistent with its international obligations such as those imposed under the CRC,⁸ unless to do so is deemed to be inconsistent with national law and/or Tuvalu custom.⁹

C. Has the CRC been incorporated into national law?

¹ Comments on this report provided by Dr Sue Farran, Professor of Laws, Northumbria University, Adjunct Professor at the University of the South Pacific and Associate of the Centre for Pacific Studies, St Andrews University, October 2015.

² UN Treaty Collection, 'Convention on the Rights of the Child', available at: https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-11&chapter=4&lang=en.

³ *Initial report of Tuvalu to the UN Committee on the Rights of the Child*, CRC/C/TUV/1, 10 October 2012, pp. 9-10. Available at:

http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CRC%2fC%2fTUV%2f1&Lang=en.

⁴ Ibid.

⁵ Ibid.

⁶ Ibid.

⁷ Ibid.

⁸ Interpretation Act, section 17.

⁹ See *Tepulolo v. Pou* [2005] TVHC 1; Case No 17 of 2003 (24 January 2005).

The CRC has not been incorporated into national law.¹⁰ There is no consolidated or comprehensive Children's Act in Tuvaluan law, rather provisions of particular relevance to children can be found in a number of Acts. Legislation of particular relevance to children includes the following:

- The Penal Code;
- The Prisons Act;
- The Island Courts Act;
- The Education (Compulsory Education) Order 1984;
- The Adoption of Children Act;
- The Employment Act;
- The Custody of Children Act;
- The Citizenship Act;
- The Births, Deaths and Marriages Registration Act;
- The Marriage Act; and
- The Mental Treatment Act.¹¹

However, many aspects of Tuvaluan law remain non-compliant with the CRC, and the Committee on the Rights of the Child has urged the State to undertake a comprehensive review of its legislation.¹²

D. Can the CRC be directly enforced in the courts?

The CRC cannot be directly enforced in the courts. Rather, only domestic law corresponding to the CRC may be directly enforced in Tuvalu.¹³ However, the High Court has indicated that although it recognises that Tuvalu has not taken the steps necessary to implement the rights under the CRC, nevertheless the Court should apply the law in compliance with its provisions.¹⁴

E. Are there examples of domestic courts using or applying the CRC or other relevant international instruments?

The CRC has been cited in Tuvalu's domestic courts to help interpret the Constitution. The CRC has been successfully referenced to expand children's rights through its use to interpret ambiguous language in the Constitution.¹⁵ However, because Tuvalu takes a dualist approach to international law, the CRC cannot be used directly to assert a claim and

¹⁰ UN Committee on the Rights of the Child, *Concluding observations on the initial report of Tuvalu*, CRC/C/TUV/CO/1, 30 October 2013, pp. 2, 6-7. Available at: http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CRC%2fC%2fTUV%2fCO%2f1&Lang=en.

¹¹ CRIN, 'Tuvalu: national laws', 2013, available at: <https://www.crin.org/en/library/publications/tuvalu-national-laws>.

¹² UN Committee on the Rights of the Child, para. 9.

¹³ *Initial report of Tuvalu to the UN Committee on the Rights of the Child*, p. 9; *Tiau Tepulolo v. Teala Pou & AG*, Case No. 17/03, 24 January 2005, available at: <http://www.paclii.org/tv/cases/TVHC/2005/1.html>.

¹⁴ *R v. Setaga* [2008] TVHC 13; [2009] 2 LRC 287 (26 May 2008), referring in particular to Article 40 of the CRC.

¹⁵ See *Regina v. Setaga* [2008] TVHC 3; Criminal Case 02 of 2008, 26 May 2008, available at: <http://www.paclii.org/tv/cases/TVHC/2008/3.html>; *Simona v. The Crown* [2002] TVHC 1; Case No. 1 of 2002, 12 August 2002, available at: <http://www.paclii.org/tv/cases/TVHC/2002/1.html>.

attempts to do so have failed.¹⁶

II. What is the legal status of the child?

A. Can children and/or their representatives bring cases in domestic courts to challenge violations of children's rights?

Children through their representatives may bring civil, constitutional or judicial review cases to court to challenge violations of children's rights (see part III.A below). Private prosecutions are also permitted in Tuvalu. However, if any private person instructs an advocate to prosecute in a case, the public prosecutor may conduct the prosecution, and the advocate instructed must act under the public prosecutor's directions.¹⁷

B. If so, are children of any age permitted to bring these cases by themselves in their own names/on their own behalf, or must the case be brought by or with the assistance of a representative?

To the extent that children are able to take their cases directly to courts, a guardian would have to give approval to bring the case. Under the High Court (Civil Procedure) Rules 1964 ("High Court Rules"), children when suing as plaintiffs must do so by a "next friend".¹⁸ Children do not appear in person in court, but instead appear either by a guardian ad litem¹⁹ or an appointed special guardian.²⁰ The rules do not clarify the distinction between a guardian ad litem and a special guardian. Next friends and guardians of children are specifically authorised to give consent for evidentiary or other procedures.²¹

C. In the case of infants and young children, how would cases typically be brought?

Cases would be brought by the child's next friend or guardian ad litem (see part II.B above).

D. Would children or their representatives be eligible to receive free or subsidised legal assistance in bringing these kinds of cases?

¹⁶ See *Tiau Tepulolo v. Teala Pou & AG; Anderson v. R* [2003] TVHC 27; HC Crim Case No 5 of 2003, 26 September 2003, available at: <http://www.paclii.org/tv/cases/TVHC/2003/27.html>.

¹⁷ Criminal Procedure Code, section 72, available at: http://www.paclii.org/tv/legis/consol_act_2008/cpc190/.

¹⁸ "Next friend" is not defined in Tuvaluan legislation. A general legal definition of "next friend" is the phrase used for a person who represents in an action another person who is under a "disability" to maintain a suit on his/her own behalf; High Court (Civil Procedure) Rules 1964 ("High Court Rules"), O. 17, r. 14, available at: [http://www.paclii.org/other/Western%20Pacific%20High%20Court%20\(Civil%20Procedure\)%20Rules%201964.html](http://www.paclii.org/other/Western%20Pacific%20High%20Court%20(Civil%20Procedure)%20Rules%201964.html).

¹⁹ *Ibid.*, O. 17, r. 17.

²⁰ *Ibid.*, O. 17, r. 18.

²¹ *Ibid.*, O. 17, r. 20.

There is no right to legal representation free of charge.²² In Tuvalu, a party to a case may represent him or herself or choose a representative at his or her own cost.²³ There is no formalised free or subsidised legal aid in Tuvalu. Therefore, in general, children or their representatives would be expected to cover the legal expenses of their cases.²⁴

There is, however, a lawyer in Tuvalu known as the “People’s Lawyer” who does work on a volunteer basis while under contract with Tuvalu’s Government.²⁵ The People’s Lawyer provides legal services to Tuvalu residents and cannot decline to represent a person because of their inability to pay legal fees.²⁶ Thus free legal aid would be provided to children or their representatives by the office of the People’s Lawyer if the children could not pay the People’s Lawyer’s fees.²⁷ It should be noted that access to the People’s Lawyer is extremely limited, especially for those living outside of the capital of Funafuti.

E. Are there any other conditions or limits on children or chosen legal representatives bringing cases (e.g., would a child's parents or guardian have to agree to a case being brought)?

The High Court Rules require the written consent of the next friend.²⁸ Before the name of any person shall be used in any action as next friend of any infant, such person shall sign a written authority to the advocate for that purpose, and the authority shall be filed with the Registrar of the Court in which the cause or matter is proceeding.²⁹

III. How can children’s rights violations be challenged before national courts?

A. If there is a potential violation of the Constitution or other principles established in domestic law, or with the CRC or other relevant ratified international/regional instruments, how can a legal challenge be brought?

A child through his/her representative may apply to the High Court for redress of violations of his/her fundamental rights and freedoms contained in the Bill of Rights under Part II of the Constitution.³⁰ These rights include: the

²² Tuvalu Constitution (“Constitution”), Part II, Division 3, section 22, available at: http://www.worldlii.org/paclii/tv/legis/consol_act_2008/cot277/.

²³ Ibid.

²⁴ Constitution, Part II, Division 3, section 22; High Court Rules, O. 68, r. 1; Magistrates’ Courts Act – Magistrates’ Courts (Fees in Civil Cases) Rules, rr. 2-3, available at: http://www.paclii.org/tv/legis/consol_act_2008/mcamciccr657/ (“Magistrates’ Courts Fees Rules”).

²⁵ James Duckworth is the People’s Attorney of Tuvalu and is based in Tuvalu’s capital city of Funafuti. See Embassy of the United States, ‘Tuvalu –Attorneys’, available at: http://suva.usembassy.gov/tuvalu_-_attorney_.html.

²⁶ People’s Lawyer Act, section 7, available at: http://www.worldlii.org/paclii/tv/legis/consol_act_2008/pla180/; See US Department of State, ‘Tuvalu 2013 human rights report’, 2013, available at: <http://www.state.gov/documents/organization/220451.pdf>.

²⁷ See People’s Lawyer (Fees) Regulations, section 4, available at http://tuvalu-legislation.tv/cms/images/LEGISLATION/SUBORDINATE/2012/2012-0005/PeoplesLawyerFeesRegulations_1.pdf.

²⁸ High Court Rules, O. 17, r. 20.

²⁹ Ibid., O. 17, r. 19

³⁰ Constitution, Part II, Division 5, section 38.

right to life and personal liberty, freedom from discrimination (on certain grounds), torture and inhuman treatment, and freedom of expression, assembly, association and movement.³¹ If a constitutional violation is alleged in a subordinate court, such as a Magistrate's Court or Island Court, the question must be referred to the High Court, unless the question raised is frivolous or vexatious.³²

A child through his/her representative may apply for a prerogative writ - that is, an order of mandamus, prohibition or certiorari (see part III.B below) - as remedies in judicial review, with leave of the High Court (see part IV.A below).³³

A civil claim may be brought in the High Court, Magistrate's Court or Island Court, depending on the amount of the claim (see part IV.A below).

B. What powers would courts have to review these violations, and what remedies could they offer?

The High Court has original jurisdiction for matters requiring interpretation or application of the Constitution.³⁴ The High Court may make any orders, issue any writs, and give any directions that it thinks appropriate for enforcing or securing the enforcement of constitutionally guaranteed rights, or in the interests of justice.³⁵ A law may be declared not to be reasonably justifiable in a democratic society.³⁶ Additional remedies available generally to the High Court include making orders to prevent abuse of the process of the law and making binding declarations of rights.³⁷ It may decline to exercise its broad constitutional powers if there are adequate means for redress for the alleged constitutional violations under other current domestic law.³⁸ Any act (whether legislative, executive or judicial) that is found to be inconsistent with the Constitution is, to the extent of the inconsistency, void.³⁹

The High Court may issue the following orders or writs as remedies in judicial review proceedings, as it considers appropriate: habeas corpus (to determine whether detention is lawful); certiorari (to quash or cancel a decision); mandamus (to order an action to be done); prohibition (to stop an action being done); or injunction.⁴⁰

³¹ Ibid., Part II.

³² Ibid., section 39.

³³ High Court Rules, O. 59, r. 3.

³⁴ Constitution, Part VII, Division 2, section 131.

³⁵ Ibid., Part II, Division 5, section 40; Superior Courts Act, section 5(1)(a), available at: http://www.paclii.org/tv/legis/consol_act_2008/sca224/.

³⁶ *Initial report of Tuvalu to the UN Committee on the Rights of the Child*, para. 26.

³⁷ Superior Courts Act, section 5(1).

³⁸ Constitution, Part VII, Division 2, section 131.

³⁹ Ibid., section 3.

⁴⁰ High Court Rules, O. 53, 56 and 61; Superior Courts Act, section 5(2).

The High Court, Magistrates' Courts or Island Courts can impose varying amounts of damages in civil proceedings, as well as fines or terms of imprisonment in criminal proceedings.⁴¹

- C. Would such a challenge have to directly involve one or more individual child victims, or is it possible to challenge a law or action without naming a specific victim?

In order for a challenge to qualify for the High Court's review, the challenge would have to directly involve one or more individual child victims.⁴² The Constitution provides that a person may bring a case to the High Court if he/she claims that any of the relevant constitutional rights has been, is being, or is likely to be contravened in relation to him/her.⁴³ Neither the Constitution nor the applicable rules of civil procedure allow for challenging a law or action without naming a specific victim.

- D. Is any form of collective action or group litigation possible, with or without naming individual victims?

Group litigation by way of representative actions is permitted in Tuvalu. Where there are numerous persons having the same interest in one cause or matter, one or more of such persons may sue on behalf or for the benefit of all persons so interested.⁴⁴ Similarly, all persons may be joined in one action as plaintiffs where their actions concern common questions of law or fact.⁴⁵

- E. Are non-governmental organisations permitted to file challenges to potential children's rights violations or to intervene in cases that have already been filed?

There is no provision that either allows or prevents a challenge from a non-governmental organisation.⁴⁶

IV. **Practical considerations.** Please detail some of the practical issues, risks and uncertainties that might be involved in bringing a case to challenge a violation of children's rights, such as:

- A. Venue. In what courts could a case be filed (e.g., civil, criminal, administrative, etc.)? What would the initial filing process entail?

Applications for redress for violations of constitutional rights should be submitted to the High Court.⁴⁷

⁴¹ See Magistrates' Courts Act, available at: http://www.paclii.org/tv/legis/consol_act_2008/mca232/; Island Courts Act, available at: http://www.paclii.org/tv/legis/consol_act_2008/ica164/.

⁴² Constitution, Part II, Division 5, section 38.

⁴³ Ibid.

⁴⁴ High Court Rules, O. 17, r. 9.

⁴⁵ Ibid., O. 17, r. 1.

⁴⁶ See, generally, Constitution; High Court Rules.

⁴⁷ Constitution, Part II, section 38.

Applications for prerogative writs (mandamus, certiorari or prohibition) may only be made with leave of the High Court. An application for such leave shall be made *ex parte* (i.e. on the application of one party alone) to the Court, and must be accompanied by a statement setting out the name and description of the applicant, the relief sought, and the grounds on which it is sought, and by affidavits verifying the facts relied on.⁴⁸ When leave has been granted to apply for an order of mandamus, prohibition or certiorari, the application must be made by notice of motion.⁴⁹

Civil or criminal cases may be heard in Island Courts, the Senior Magistrate's Court or Magistrates' Courts, or the High Court,⁵⁰ depending on the amount of the claim in civil cases, or the type of offence in criminal cases:

- The Island Court is the lowest possible court in which to bring a civil or criminal action in Tuvalu.⁵¹ The Island Courts have jurisdiction to hear civil tort suits where damages do not exceed \$250 and a limited list of criminal causes of action where the maximum fine is \$250 and the maximum period of imprisonment is six months.⁵²
- The Senior Magistrate's Court and Magistrates' Courts have very expansive, though not unlimited, jurisdiction in both civil and criminal matters.⁵³ As at 2012, only a Senior Magistrate has been appointed, hearing cases in Funafuti and in the outer islands as needed, at either the Magistrates' or Senior Magistrate's level.⁵⁴
- The High Court has unlimited original jurisdiction in both civil and criminal cases.⁵⁵ For civil cases every action in the High Court must be commenced by a writ of summons indorsed with a statement of claim or relief or remedy sought in the action.⁵⁶

B. Legal aid / Court costs. Under what conditions would free or subsidized legal aid be available to child complainants or their representatives through the court system (i.e., would the case have to present an important legal question or demonstrate a likelihood of success)? Would child complainants or their representatives be expected to pay court costs or cover other expenses?

See part II.D above.

⁴⁸ High Court Rules, O. 61, r. 2.

⁴⁹ Ibid., O. 61, r. 4.

⁵⁰ See Pacific Islands Legal Information Institute, 'Tuvalu Courts System Information', available at: <http://www.paclii.org/tv/courts.html>.

⁵¹ Ibid.

⁵² See Island Courts Act, Schedule 1 and 2.

⁵³ See Magistrates' Courts Act, Part IV, sections 20-25; see also Pacific Judicial Education Programme, 'Tuvalu Island Courts Bench Book', pp. 19-20, June 2004, available at: http://www.fedcourt.gov.au/_data/assets/pdf_file/0004/18715/Tuvalu-The-Magistrates-Court-2004-English.pdf.

⁵⁴ *Initial report of Tuvalu to the UN Committee on the Rights of the Child*, para. 19.

⁵⁵ See Pacific Islands Legal Information Institute, 'Tuvalu Courts System Information'.

⁵⁶ High Court Rules, O. 2, r. 1.

Court and court-related costs in civil proceedings in the High Court are at the discretion of the Court.⁵⁷ The High Court Rules allow for the court fees to be waived, at the Court's discretion, on account of the poverty of any party or for other sufficient reason.⁵⁸

- C. Pro bono / Financing. If legal aid is not available, would it be possible for child complainants or their representatives to obtain legal assistance from practicing lawyers on a pro bono basis, through a children's rights organisation, or under an agreement that does not require the payment of legal fees up front?

Legal fee arrangements are not regulated in Tuvalu. The Rules of Court Committee is empowered to make rules with respect to permissible fee arrangements of lawyers practising before the High Court, but the Committee has not promulgated any rules on the topic yet.⁵⁹ Therefore, pro bono legal representation, NGO representation, and alternative fee arrangements are all possible and legal in Tuvalu.

Local pro bono legal representation is limited, with only seven attorneys practising in Tuvalu,⁶⁰ and no private law firms in Tuvalu. However, there are resources outside of Tuvalu which offer legal assistance. Attorneys living in the nearby nation of Fiji will occasionally take on cases in Tuvalu.⁶¹ The Centre for Asia-Pacific Pro Bono ("CAPPB") based in Australia offers legal advice on human rights cases in Tuvalu.⁶²

- D. Timing. How soon after a violation would a case have to be brought? Are there any special provisions that allow young adults to bring cases about violations of their rights that occurred when they were children?

Tuvalu does not have a statute of limitations or any other legislation, specific to child victims or otherwise, addressing when legal claims must be brought.

Applications for leave to apply for an order of certiorari to remove any judgment, order, conviction or other proceeding for the purpose of it being quashed must be made no later than six months after the date of the proceeding or such shorter period as prescribed by law.⁶³ The High Court has the power to extend time limits for bringing a case under the High Court Rules, in the interests of justice.⁶⁴

⁵⁷ Ibid., O. 65, r. 1.

⁵⁸ Ibid., O. 68, r. 2; Magistrates' Courts Fees Rules, r. 4.

⁵⁹ Superior Courts Act, Part V, section 22.

⁶⁰ *Initial report of Tuvalu to the UN Committee on the Rights of the Child*, p. 10.

⁶¹ See Embassy of the United States.

⁶² See Centre for Asia-Pacific Pro Bono, 'Projects', available at: <http://www.cappb.org/projects>; Centre for Asia-Pacific Pro Bono, 'CAPPB Request Pro Bono Guidelines', available at: <http://cappb.org/sites/default/files/CAPPB%20Request%20Pro%20Bono%20Guidelines.pdf>.

⁶³ High Court Rules, O. 61, r. 3.

⁶⁴ Ibid., O. 64, r. 5.

- E. Evidence. What sort of evidence is admissible/required to prove a violation? Are there particular rules, procedures or practices for dealing with evidence that is produced or presented by children?

In criminal cases, a child can provide evidence without being under oath if the judge believes that the child should not be admitted to give evidence on oath due to their immature age.⁶⁵

In civil cases, when taking evidence from a child, consent is given by the next friend, guardian, or other person acting on behalf of the child.⁶⁶ The court has wide discretion to direct the manner in which evidence is presented.⁶⁷ The court could thus direct the child's evidence to be presented by affidavit and keep the child from being subjected to cross-examination.⁶⁸ However, there are no special rules compelling a court to so act.

- F. Resolution. How long might it take to get a decision from the court as to whether there has been a violation?

Cases in the past involving constitutional questions and interpretation have taken nearly two years from filing to final judgment.⁶⁹ Notably, the delay in finding legal representation can significantly delay the time it takes for residents to have their claims adjudicated.

No further information on this topic is available.

- G. Appeal. What are the possibilities for appealing a decision to a higher court?

Decisions of the Island Courts can be appealed to a Magistrate's Court, and decisions of the Magistrates' Courts can be appealed to the Senior Magistrate's Court.⁷⁰ Decisions of the Senior Magistrate's Court can be appealed to the High Court.⁷¹ Decisions of the High Court can be appealed to the Court of Appeal.⁷²

Finally, decisions of the Court of Appeal can be appealed to the Sovereign in Council (Judicial Committee of the Privy Council) in the United Kingdom, which is the highest court of appeal for Tuvalu. Appeals may be made to the

⁶⁵ Criminal Procedure Code, Part IV, section 134, available at: http://www.worldlii.org/paclii/tv/legis/consol_act_2008/cpc190/.

⁶⁶ *Ibid.*, O. 17, r. 20.

⁶⁷ High Court Rules, O. 39, rr. 2-3.

⁶⁸ *Ibid.*

⁶⁹ See *Tiau Tepulolo v. Teala Pou & AG*.

⁷⁰ Note, however, that as at 2012, only a Senior Magistrate has been appointed, hearing cases in Funafuti and in the outer islands as needed, at either the Magistrates' or Senior Magistrate's level: *Initial report of Tuvalu to the UN Committee on the Rights of the Child*, para. 19.

⁷¹ Constitution, Part VII, Division 2, section 132; Superior Courts Act, Part II, section 3; Magistrates' Courts Act, Part V, sections 39-43; Criminal Procedure Code, Part IV, section 115; Criminal Procedure Code, Part IX, section 270; Pacific Islands Legal Information Institute, 'Tuvalu Courts System Information'.

⁷² Constitution, Part VII, Division 3, section 135; Superior Courts Act, Part III, section 9-11. Note that no civil appeal is allowed for decisions which are provided by statute to be final: see Pacific Islands Legal Information Institute, 'Tuvalu Courts System Information'.

Sovereign in Council, but only: in cases involving the interpretation or application of the Constitution; appeals relating to the enforcement of the Bill of Rights; and final or interlocutory decisions of the Court of Appeal which, in the opinion of the Court of Appeal, are of public importance.⁷³ Appeals are made to Her Majesty in Council by filing a notice of appeal within 56 days of the order or decision of the court below granting permission or final leave to appeal, or within 14 days of the grant by the Judicial Committee of permission to appeal, depending on the nature of the case.⁷⁴

In civil cases, the lower court will generally grant leave to appeal if the court is satisfied that the case raises a point of general public importance. In criminal cases, the lower court will generally grant leave only if the case raises questions of great and general importance, or there has been some grave violation of the principles of natural justice. In the absence of leave, permission to appeal must be granted by the Board (panel of judges hearing the case). In some cases there is an appeal as of right and a different procedure applies.⁷⁵

- H. Impact. What are the potential short-term and long-term impacts of a negative decision? Is there a possibility for political backlash or repercussions from a positive decision?

Tuvalu's judicial system is modelled on English common law, which is based on judicial precedent, whereby courts are bound to follow earlier court decisions on the same material facts. Therefore negative decisions may have long-term impacts. However, the Court of Appeal or the High Court may, while treating its own decisions as normally binding, depart from a previous decision "when it appears right to do so".⁷⁶

According to a 2013 report by the US State Department, the Government of Tuvalu generally respected judicial independence.⁷⁷

- I. Follow up. What other concerns or challenges might be anticipated in enforcing a positive decision?

No other concerns or challenges could be identified.

- V. **Additional factors**. Please list any other national laws, policies or practices you believe would be relevant to consider when contemplating legal action to challenge a violation of children's rights.

National laws

⁷³ Constitution, Part VII, Division 4, section 136.

⁷⁴ Judicial Committee (Appellate Jurisdiction) Rules 2009, rr. 17(1), 18(2), available at: <https://www.jcpc.uk/docs/judicial-committee-appellate-jurisdiction-rules-2009.pdf>.

⁷⁵ Judicial Committee of the Privy Council, 'Role of the JCPC', available at: <https://www.jcpc.uk/about/role-of-the-jcpc.html>.

⁷⁶ See Laws of Tuvalu Act, section 13(4), available at: http://www.paclii.org/tv/legis/consol_act_2008/lota182/.

⁷⁷ US Department of State.

Tuvalu currently does not have a sophisticated or specialised courts system to handle cases involving children’s rights violations. It does not have a separate juvenile justice system. A Family Protection and Domestic Violence Act was passed on 18 December 2014. This brings within its scope children who experience or witness domestic violence.⁷⁸

Customary laws and community justice

The laws of Tuvalu include customary law, which comprises the customs and usages, existing from time to time, of the natives of Tuvalu.⁷⁹ Customary law has effect as part of the law of Tuvalu, except to the extent that it is inconsistent with an Act, an applied law or subsidiary legislation that has been published.⁸⁰ Generally, customary law must be recognised and enforced by, and may be pleaded in, all courts except where its recognition or enforcement would result, in the opinion of the court, in injustice or would not be in the public interest.⁸¹ Courts must take customary law into account when considering specified matters in criminal and civil proceedings. Customary law must be applied in deciding questions in connection with matters concerning the legitimacy, legitimation or adoption of children, as well as the right to custody or guardianship of children.⁸²

In its concluding observations, the Committee on the Rights of the Child expressed its concern that “traditional customs appear to be contrary to the principle of respect for the views of the child”, and recommended that Tuvalu “ensure that traditional customs are not regarded as barriers to the full participation of children”.⁸³ According to a US State Department report, “(l)ocal hereditary elders exercise traditional discretionary punishment and disciplinary authority”, including “the right to inflict corporal punishment for infringement of customary rules”.⁸⁴ Concern was similarly expressed about corporal punishment of children in the first and second Universal Periodic Review reports.⁸⁵

National human rights institution

As at the date of this report, there is no independent monitoring body mandated to investigate and redress violations of children’s rights, such as a children’s ombudsperson or a national human rights commission. The Committee on the Rights of the Child has recommended that such a body be established to enable children to submit complaints.⁸⁶ In 2014 an Ombudsman was appointed to investigate complaints about misconduct or discriminatory practice by a leader

⁷⁸ Secretariat of the Pacific Community Regional Rights Resources Team, ‘Tuvalu passes domestic violence Act’, 23 December 2014, available at: www.spc.int/rrt/news-events.../586-tuvalu-passes-domestic-violence-act.

⁷⁹ Laws of Tuvalu Act, section 5(1).

⁸⁰ Ibid., section 5(2).

⁸¹ Ibid., Schedule 1, section 2.

⁸² Ibid., Schedule 1.

⁸³ UN Committee on the Rights of the Child, para. 27.

⁸⁴ US Department of State.

⁸⁵ A/HRC/10/84, 9 January 2009; A/HRC/24/8, 5 July 2013.

⁸⁶ UN Committee on the Rights of the Child, para. 18.

and breaches of the Leadership Code 2006.⁸⁷ It is unclear, however, whether it can receive complaints from children.

This report is provided for educational and informational purposes only and should not be construed as legal advice.

⁸⁷ <http://www.radionz.co.nz/international/pacific-news/251919/tuvalu-appoints-first-chief-ombudsman>.