

Cook Islands and CEDAW: NGO Perspectives Shadow Country Report

By

Punanga Tauturu Incorporated
Cook Islands Family Welfare Association
Cook Islands National Council of Women
Are Pa Taunga
Te Kainga
Cook Islands Workers Association
Mauke National Council of Women
Atiu National Council of Women
Aitutaki National Council of Women
Mitiaro National Council of Women
Mangaia National Council of Women
Cook Islands Christian Church Womens Association

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A. Introduction

The Cook Islands has been a party to the Convention on the Elimination of all forms Discrimination Against Women through New Zealand, which NZ signed on 17 July 1980 and ratified on 10 January 1985. On 11 August 2006 the Cook Islands acceded to the Convention in its own right.

We fully support the initiative taken by the Government of the Cook Islands to provide an initial status report on the situation of women in the country. We also welcome the opportunity to deepen this analysis by acknowledging some limitations and shortcomings of the Governments efforts to implement the Convention.

When the Cook Island Government became a party in its own right in 2006, reservations that had been in place since 1980 were preserved. Reservations were placed on Articles 2(f) concerning customs and practices, 5(a) relating to social and cultural patterns of conduct of men and women, and 11(2)(b) regarding maternity leave. We urge Government to lift these reservations urgently because, as we show in this report, their concerns are inconsistent with current practice.

The purpose of this report is to supplement the Government's Report by highlighting our perspective on the nature of the Government's commitment to implement the Convention through legislation, polices and resource allocation.

This report first outlines some contextual issues. It then deals with specific articles where we feel we have particular and specific contributions to make taking into account the limited time and specific expertise available to us to adequately expand our analysis of all the articles mentioned in the Government report.

The contextual issues cover the lengthy process of law making in the country; the multiple and overlapping interests of individuals in government and civil society; the lack of government resources committed to women's concerns; the non self-evident placement of some key issues in the Governments report, especially domestic violence and disabilities; and the economic direction of the country especially with respect to the economic rights of women.

This Report was initiated and facilitated by Punanga Tauturu Incorporated (Cook Islands Women's Counselling Centre) and, with the assistance of UNDP, was jointly prepared at a three day Consultation, held in Rarotonga, by the organisations and individuals listed in Appendix 1.

B. Context: features of the Cook Islands relevant to understanding the status of women

1. Lengthy law-making processes

In the Cook Islands, 24 Members of Parliament represent a population of about 15,000, with 9,000 of voting age. This represents a very high ratio of politicians to voting population. Because electoral margins are low, often under 20 votes, the threat of no-confidence vote in an elected government is high. This has contributed to a frequent turnover of Governments because those with slim majorities in Government, are reluctant to meet. Although considerable work is done in select committees, Parliament meets mainly to pass the budget. Various bills have been drafted according to Government priorities and where necessary external assistance is sought for drafting support. However, Parliament does not sit enough to turn draft legislation into law. Over a two-year period, from the general elections held in 2004 to the snap elections held in September 2006, Parliament sat for only 61 days.

However, where there is strong political will, some legislation such as the Unit Titles Bill, a controversial bill that made changes to longstanding customary land titling practices, have succeeded in becoming law in a very short period of time. Similar political commitment needs to be applied to law reform related to the economic, political and social rights of women.

2. 'Multiple hats' and overlapping responsibilities

The small size of the adult Cook Island population and the lack of government resources for social services for women, means that many women wear multiple hats, have multiple community responsibilities and must often make difficult compromises. Often advocates for women's issues are reluctant to criticise government or the private sector, because they are also government employees. Similarly, some strong advocates for women's social and political rights are compromised in pushing for women's economic rights because they are also owners of small and medium sized businesses. Moreover, the small size of the population means advocates for women's rights, government employees and members of the private sector can also be closely related kin. These compromises mean pressure on Government to uphold its promises, is hard to sustain.

3. Limited Government resources for programmes

Government financial commitment to implement policy only covers salaries with a very small amount allocated for operations. Assistance for the operation of projects therefore comes from international donors or NGO's. There is little room for Government to advance its own initiatives under CEDAW and many projects addressing discriminatory practices against women are funded externally (e.g. Punanga Tauturu). However, even with the current resources allocated by Government, initiatives to support a commitment to CEDAW could be advanced such as requiring all government departments to identify and report on gender specific outcomes.

4. Women as landowners

Women in the Cook Islands have equal access to land. This makes them better off relative to many other Pacific women because being landowners enables women to have access to credit and to pursue independent economic activities. However, despite this relative advantage, the status of women in the Cook Islands remains low compared to men. It is important therefore

to look more carefully at the social and cultural practices aside from access and control of land, to fully understand the nature of discrimination of women in the Cook Islands.

5. Rural women as a special case

The Government Report on CEDAW notes the importance of the 'Outer Islands' in the Cook Islands and their equivalence to 'rural' areas in a non-island context. We would fully endorse this analysis and further emphasise the need to consider the situation of women in the Outer Islands as requiring special treatment. Not only are they more geographically distant from government services and resources located on Rarotonga but, communities in the Outer Islands are small and the islands on which they make their homes, are separated from each other by vast sea distances. Furthermore, the social and cultural practices in the Outer Islands are often more conservative and traditional as witnessed by the weight given to ensuring modest dress codes for young women and the pressure to attend weekly church services.

6. Key issues: domestic and sexual violence

In the Government Report, domestic violence is dealt with in terms of law and health, but in doing so we feel the Government conceals the magnitude and extent of domestic violence in the Cook Islands. Not only is it the biggest discriminatory factor against women, it is currently the largest reported crime against women. Closely related is the growing prevalence of sexual violence against women that is a major cause of mental stress.

Domestic violence is not only concealed by the cultural and social context that we live in but it is also obscured in the Government Report. We want to highlight it by linking it more explicitly to the guarantee of non-discrimination under the Cook Island Constitution as discussed in Article 1. Also we would like to see it discussed in Article 2, because this article deals the State's obligation to modifying customs and practices that discriminate against women.

7. Key issues: disabilities

The Government Report has rightfully highlighted the importance of addressing the specific concerns of people with disabilities in the Cook Islands. These concerns however should be gender specific such as for instance the issue of the sexual and reproductive rights of women with intellectual disabilities. However, a more critical issue for CEDAW is that most caregivers of people with disabilities are women. In addition to paying attention to the rights of people with disabilities, we feel strongly that the rights of caregivers should be an equally critical focus of Government concern.

This leads to a fundamental problem in the Government Report in that it fails to adequately highlight the significant role of women as primary caregivers of young children, the infirm, the aged and those with disabilities. In this regard measures to promote the development and advancement of women in the Cook Islands should always be mindful of this reality.

8. The economic direction of the Cook Islands

The Government's current economic development path is clearly outlined by the National Sustainable Development Planning process (NSDP). However, the first priority of this plan is to have an economy driven by the private sector. While this is consistent with current regional development ideologies, it overlooks the economic and social rights of women. This can clearly be seen by the reluctance the private sector to consider extending maternity provisions granted to public servants into the private sector.

Women play diverse roles in the country's economic growth process and this should be recognised by ensuring their diverse concerns, issues and voices are considered and promoted in forums that discuss, plan and manage the economic environment. For instance, the Chamber of Commerce is currently suggesting privatising some essential services such as water. However, access to water is a basic human right and consideration of any user-pays systems for water is likely to discriminate especially against those women who are the primary unpaid caregivers in the country. Any discussions at the Chamber of Commerce around the issue of privatisation of services should be include women from a range of economic situations.

9. Conclusion

These background features of the Cook Islands have overriding implications for the discrimination of women and should be kept in mind by the Committee as they consider the following Articles.

C. Articles

Article 1 Definition of Discrimination Against Women

The Cook Island Constitution guarantees fundamental human rights without discrimination on the grounds of sex. Article 64 (1981) specifically refers to 'the right of the individual to life, liberty and *security of person*'. However, legislation and practices in relation to domestic violence are inconsistent with this Article and therefore infringes on the rights to security of women in their own home.

The Government Report recognises that there is not a definition of discrimination in the Constitution or any other Cook Islands Law nor is the concept of indirect discrimination referred to and this, as a result, hinders women's recourse to justice in relation to domestic violence.

Recommendations

We call on Government to adopt the CEDAW definition of discrimination.

We call on Government to recognise indirect discrimination so that legally domestic violence is treated as a discriminatory act against women and not as general assault.

Article 2 Policy measures to be undertaken to Eliminate Discrimination

We fully support the Governments acknowledgement that a 'comprehensive programme of law reform is needed so that relevant areas of Cook Islands law are consistent with CEDAW' (Government Report to CEDAW, 2005, para 2.35.)

Recommendation

We call on Government to lift the Reservations placed on Articles 2(f) of CEDAW concerning customs and practices.

Article 3 Guarantees basic human Rights and fundamental freedoms on an equal basis with men

Fundamental to understanding the Cook Islands way of life is to recognise that women are the primary caregivers of children, aged people, people with disabilities and people who are sick. This caregiving role requires greater support through public recognition, means-tested social support and greater consideration given to government sponsored childcare and respite care facilities. An important area that was brought up in one of the Disability Caregiver workshops was that mothers, during maternity, or just after they have had their babies, are not given any information or support if they have had a child with a disability. There is no early intervention service from the doctor or the Health Department once the child is born, let alone follow-up services to ensure the mother has appropriate support. This is often quite distressing. Mothers are often the ones to deal with this, along with her responsibilities for the rest of the family, and must find their own solutions.

Another way to ensure this recognition is through positive discrimination to ensure there is full gender equity in all senior appointments – that is that 50% of all senior appointments in Government, State Owned Enterprises and Religious bodies are women. This begins by ensuring that all appointment committees are constituted with equal numbers of men and women.

Our Christian beliefs also have an impact on the development and advancement of women. Our doctrines are quite entrenched as to how people should behave. Men are predominant decision makers in the church and their decisions have a ripple effect and impact more on women in terms of dictating appropriate behaviour. It is possible to change this without disempowering anyone, by emphasising the value of being generously inclusive.

In the Outer Islands, ensuring the development and advancement of women is more difficult since there are fewer opportunities for holding such public office. However, in addition to continuing to practice positive discrimination towards women in appointments to government and religious bodies, consideration could be given to recognise the daily efforts of women in the Outer Islands, through for instance special community celebrated awards.

Even with the legislative change promoted by Government, the prevailing social and cultural views continue to perpetuate conservative attitudes towards the advancement and development of women, and thus longer term systematic programmes advancing women are needed.

This section of the Governments Report focuses heavily on the Governments commitment to recognise and support people with disabilities. This initiative is welcomed especially as it led to the endorsement of Disability Policy in 2003 which deals with legislative measures and funding and administration of services for the elderly and the disabled. The Disability Action team sees its role as implementing this policy and not just updating the survey as is implied in the Government Report.

Recommendations

Given the extent of conservative attitudes towards women, the Government must commit to positive discrimination in the community and in its appointment practices especially at senior levels.

In respect of women caregivers of disabled people, the Government should give consideration to the needs of caregivers such as the provision of respite care.

Article 5 Sex Roles and Stereotyping

We agree with the Government Report that 'firm roles remain in the community about the roles of men and women sometimes due to strong religious beliefs or in deference to traditional practices and customs' (Government Report to CEDAW, 2005, para 5.12). However we feel that the Government can make a decisive step in the direction of changing attitudes by actively promoting the elimination of prejudices and customs that are based on the inferiority of women which are different from customs and roles that are sex-specific but are not based on the inferiority of with sexes. This would ease concern over matrilineal cultural practices, such as those found in Pukapuka where women plant taro patches on wetlands that are passed on through the mothers line. This is not discrimination based on the inferiority of men or the superiority of women, but is a well-established method of land and resource distribution.

Recommendation

We call on Government to lift the reservation placed on Article 5(a) relating to social and cultural patterns of conduct of men and women.

Article 11 Employment

The provision by Government of affordable childcare would make a huge contribution to women's right to work. All mothers could continue working and grandmothers could be financially recognised for their otherwise unpaid childcare services. Inadequate unaffordable childcare facilities causes stress for families and leads to higher absenteeism amongst women for child related issues, financial difficulties in families which in turn often leads to domestic violence, poor mental health and compromised child development.

We agree that the maternity protection is a contentious issue with employers in the private sector (particularly those with small staff numbers of one or two employees) citing possible financial difficulty if required by law to provide paid maternity leave as per the public sector. This resistance has delayed the enactment of the Employment Relations Bill and is clearly discriminatory towards women. This further delays the progressive elements of this labour bill such as Occupation Health and Safety issues, , minimum wage rates, redundancies and rights of female migrant workers. Further, even outside of this Bill, there is no excuse for the lack of sexual harassment policy.

Recommendations

We call on the government to urgently put the Employment Relations Bill on the table for open discussion with NGO's and other stakeholders within the community for consultation.

We call for the adoption of Employment Relations Bill within 12 months.

We urge the government to subsidise childcare services so accessible and affordable options are available throughout the country.

We urge the Government to lift their Reservation on article 11.2(b).

We also call on Government to allow women to make their own choices with regard to being deployed to “situations involving violence”. Not only should this be a woman’s right to choose but, Cook Islands women are already serving in these situations.

Article 12 Health Care and Family Planning

In the Government Report, there is an overview of the health situation of women in the Cook Island, but there is no focus on women’s health. We encourage Government to commit to providing a professionally staffed full ‘well woman’ service which covers breast cancer, teenage pregnancy, reproductive and sexual health.

All reproductive health polices need to be reviewed and updated for instance where husbands are required to sign before a women can have a medical procedure like a tubal ligation. Further the sexual health of women needs particular attention especially the extent to which infertility is occurring as a result of pelvic infections and STI’s. The regional agency concerned with HIV/Aids in the Pacific reports that more women are presenting with HIV/AIDS and although the Cook Islands presents as a low prevalence country, the considerable mobility of its population make it susceptible to the spread of the virus. Greater awareness and support is needed to promote the sexual health of young women.

Further, as mentioned earlier, women are the main caregivers of the infirm and sick so if the health situation of the country deteriorates, so the burden on women will grow. Mental health issues among women require urgent attention in the Cook Islands because of the critical contribution that good mental health has on individuals, families and communities.

Recommendations

The Government should centralise all women’s reproductive and sexual health services into one location on Rarotonga with mobile clinics to the Outer Islands. These services should be staffed, where possible, by suitable trained Cook Island women.

A dedicated breast cancer clinic is needed in Rarotonga. We call on Government to make use of the mammography machine located in Rarotonga, either through appointing someone to operate it or to make arrangements for regular visits by overseas-based medical professionals.

Mental health concerns should also consider preventative care and not just focus on crisis management. We urge Government to allocate resources to promoting good mental health before it becomes a crisis for the individuals, families and communities involved.

Article 14 Rural Women

Gender discrimination experienced by women in rural areas, in the Cook Islands this is predominantly the Outer islands, is further exacerbated by their distance from Rarotonga where most resources and services are located. In addition, some social and cultural practices make it more difficult for women to claim their individual rights. Daily life is widely considered to be both more traditional in the Outer Islands and also more cash poor.

There should be some means to encourage the economic status of women in the Outer Islands to counteract social and cultural barriers. By positively discriminating for higher child benefits in the Outer Islands, people who receive these benefits, most of whom are women, will ensure the resources spread throughout the community. An increase in child benefits is recognition of unpaid work and the higher cost of living in the Outer Islands.

Recommendations

In relation to changes in laws, policies, practices concerning discrimination against women, special consideration must be given to the particular situation of women in small remote communities' e.g. health, legal services, police assistance and emergency/protective services.

A free emergency telephone service for counselling, advice, and referral to appropriate agencies, should be available on all island.

Government should increase child and infirm benefits to people in the Outer Islands, as a way to enhance the possibilities for caregivers engaging in productive economic activities.

Article 15 Equality before the Law and Civil Matters

The Government Report notes that there are 'some factors which may prevent women from fully utilising the court system' (15.3). While some of these factors are about ensuring women are aware of their rights, legal reform is also needed.

For instance, civil protection does not exist for married but not separated women, and unmarried women. In addition, there is no civil provision relating to children who are victims of domestic violence. There is no recognition of marital rape in law. There are no specific laws relating to domestic violence. Divorce laws discriminate against women in that husbands, but not wives, can name the alleged adulterer in the petition for divorce. This is inconsistent with CEDAW.

In the Outer Islands these issues are more difficult in that women have nowhere to go for recourse. Many women in the Outer Islands call Punanga Tauturu in Rarotonga because they have no confidence in the Police on the islands. There are also considerable delays in getting Police and/or lawyers to the Outer Islands.

Legal Aid is for perpetrators of crime not for victims because of the assumption that legal aid is for criminal cases, not civil cases. This discriminates against women who in general are seeking maintenance, which is a civil issue. It is also likely to be related to the way that civil cases can go on thus making action very expensive.

Police in general are still insensitive to the impact of their presence – especially as men still constitute the major part of the police force. This is especially evident in relation to sexual crimes against women. Some cases are taking many months or years to get to court.

While we support Government calls for greater awareness programmes, we also note that to date awareness-raising activities are almost entirely undertaken by NGOs.

Recommendations

A comprehensive Domestic Violence Bill, similar to that of NZ Family Law Act, is urgently needed.

Police policies on handling domestic violence cases need to be improved (eg ensuring a gender balance in investigating teams)

There continues to be a need for more gender sensitivity training and regular gender audits on Police procedures and policies in relation to crimes against women.

Police should be rotated every two years on the Outer Islands.

We fully support the establishment of a Law Reform Commission.

Article 16 Equality in Marriage and Family Life

Non-molestation orders are ineffectual in that they require a court order to be made via a lawyer between the hours of 8-4pm Monday to Friday. The reality is that most events requiring non-molestation orders occur outside these times and thus often, the life of a woman and her family is held in balance in a night or weekend of violence. A non-molestation order is an immediate tool to protect woman her and her family in order to have space to map out her life so they must be made available to victims of domestic violence at any hour. As a public service, the Ministry of Justice must amend policy to ensure women can access this protection 24 hours a day, 7 days a week.

We agree with the Governments analysis in this section, especially as they highlight the importance of law reform.

Recommendations

We fully support the recommendations made by the Government in their report for law reform but urge them to commit to a timeline for the critical areas they identify such as fault-based divorces

Justices of the Peace should be able to dispense non-molestation orders.

Justices of the Peace training processes should include gender sensitivity training in terms of violence against women every 6 months.

The rights of de facto partners need to be considered especially in the division of property.

D. Conclusion

We recognise the work of the Government in attempting to improve the status of women in the Cook Islands. However, the many discriminatory practices against women cannot be addressed through proposed legislative reform if Parliament is not sitting and undertaking its responsibility to make better laws for all citizens.

21/06/2007

As NGO's we remain committed to working alongside Government to ensure progress is made on these issues, because Government cannot do this alone

21/06/2007

Appendix 1: Organisations represented at Consultation, Oct 2006

Punanga Tauturu Incorporated
Cook Islands Family Welfare Association
Cook Islands National Council of Women
Are Pa Taunga
Te Kainga
Mauke National Council of Women
Atiu National Council of Women
Aitutaki National Council of Women
Mitiaro National Council of Women
Mangaia National Council of Women
Cook Islands Christian Church Womens Association

Appendix 2: Organisations who received Draft 1 for Comment
(* indicates where they made a comment)