

Office of the High Commissioner for Human Rights  
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## Universal Periodic Review of the Republic of Nauru 2011

Nauru Island Association of Non-Government Organisations – joint UPR submission,  
Nauru – July 2010

### Summary

Nauru Island Association of Non-Government Organisations (NIANGO), Community Paralegals, Catholic Womens Group and Members of the Nauru Provident Fund and Superannuation Fund respectfully submit to the Human Rights Council the following information regarding human rights in the Republic of Nauru (hereafter Nauru).

Nauru ratified the Convention of the Rights of the Child in 1994. Human rights referred to in this document that are not based on that convention find their source in the 1984 Universal Declaration of Human Rights.

Via this submission, Nauru Island Association of non-government organizations seeks to contribute to the protection of human rights in Nauru. In this submission, NIANGO provides information under Sections as stipulated in the General Guidelines for the Preparation of Information under the Universal Periodic Review.

## 1. BACKGROUND

### 1.1 Methodology

A week of national consultation was held 24-28 May 2010 conducted by Regional Rights Resources Team (spc) and OHCHR based in Fiji with – then private consultations with representatives of various groups.

Nonetheless, information herein are based on, over time, various public meetings conducted by NIANGO, consultations with smaller community groups and members of various organizations who on hearing of the hum

### 1.2 Nauru Island Association of Non-Government Organisations

Nauru Island Association of Non-Government Organisations was established in 1992. It is an umbrella organization for NGOs/CBOs/CSOs. Membership is not compulsory. The basic objectives of NIANGO provide: platform for NGO advocacy and common representation; information to members; network with regional and international NGOs; links with organizations into capacity building activities; and, assistance to members in institutional strengthening.

### 1.3 Nauru

Nauru is a raised atoll with land area of 21sq km and a population of almost 10,000. The island gained independence in 1968. The island economy is based on phosphate that is extracted from the central plateau that covers 80% of the island. The mined-out phosphate lands expose tall coral pinnacles that render the land uninhabitable and useless. The people depend on imported goods and food, which include canned fish and

various other fish products. The population of 10,131 people (2002 census) lives along the narrow coastal belt with a density of 577, the highest in the region (SPC 2006).

Phosphate mining started in the early 1900's and since independence, it has been the source of great wealth to Nauru. But due to mismanagement of trust funds, national bank and investments combined to make the economy collapse in the late 1990s. What eventuated in the end was the failure of other economic sectors, the existing "welfare state", a neglected education system and people without skills to develop an alternative economy to mining. To cut costs the government froze wages and reduced the size of the public service. Food security has emerged as a serious issue as a consequence of policy failure and chronic economic decline. This resulted in a total regression of development with men, women and children resorting to basic subsistence fishing and gardening/agriculture for survival.

It is feared that the swift economic decline resulting in strong competition for scarce resources, the widening gap between the well-to-do and people of the vulnerable groups will exacerbate and promote further neglect and abuse of human rights. It is against this background and motivation that NIANGO et al. through this submission seeks to contribute to the protection of human rights in Nauru.

## FRAMEWORK

### 1.2 International Obligations

Nauru ratified the Convention of the Rights of the Child (CRC) in 1994. Nauru, however, is not signatory to the Optional Protocol to the CRC on the sale of children, child prostitution and child pornography. There is concern that in sixteen years since ratification, no progress has been made to realize the initial two-year report on the CRC. NIANGO et al. is aware of the importance of reporting under international instruments as it is an integral national and international accountability mechanism on the protection, respect and fulfillment of human rights.

## 2. PROMOTION AND PROTECTION OF HUMAN RIGHTS ON THE GROUND

### 2.1 FREEDOM OF INFORMATION

Freedom of expression is safeguarded in Art.12 of the Nauru Constitution. There are limitations for libel and national security. There are no protections for freedom of information under the law. In the past, government has proven uncooperative in granting access to information. The state runs one radio station, a television station that both carry material from foreign media. Community participation is encouraged in radio programmes but content scope is limited by government media. No private broadcasting exists. A government information office emails government documents and news items to a list of subscribers. The government releases two monthly newsletters, *Mwinen ko* prepared by Nauru media and the *Government Bulletin* prepared by the government information office; and the *Government Gazette* is printed as and when necessary. High printing costs inhibit the production of private newsletters, though recently the newsletter *Eben Bwio: Make it Right* funded by the alternative government was published during the latter state of emergency (June 2010). The internet is restricted to two public access points: a private internet cafe run by the statutory body Nauru Phosphate Royalties Trust Fund, and, Digicel, foreign owned telecommunications company. Access to the internet remains limited to within the bounds of the internet café and subscribers to

the Digicel system have problems with connectivity in many parts of the island. High costs of access through Digicel prevent local private businesses from maintaining internet cafes.

### 2.1.1 Voter education

On 11 June 2010, caretaker president Marcus Stephen declared a State of Emergency on the premise that economy of Nauru was threatened. On the same day, Parliament was dissolved, and the electoral roll was closed at 1.30pm. General Election date was set for eight days later, on 19 June 2010. NIANGO et al. considered eight days lead up to the general elections as insufficient time for voters to adequately consult with prospective candidates, new and old, and make informed decisions on choice of fresh members of parliament. Everyone has the right to take part in the government and this right includes the effective participation of voters through the provision of information on the issues at hand so that they can make informed decision. There was great concern that government displayed a lack of respect to rights of many voters by denying them the opportunity to make informed decisions to these general elections given the abrupt announcement of the state of emergency and general elections, the small number of days in between, and no voter education to inform voters of the issues at hand.

### 2.1.2 Voter transfers

NIANGO et al, was concerned of the abuse of transfer of voters from one constituency leading up to the state of emergency general elections. The Electoral Act 1965-2007 permits the transfer of voters from one constituency to another, on the grounds that they had "substantial connections" in the destination constituency. Substantial connections in the main referred to lands, businesses, properties and close family connections.

Prior to the declaration of the state of emergency, mass numbers of voters were already being transferred from one constituency into another constituency. NIANGO et al. were concerned that certain people were privy to inside information of the upcoming "snap elections". Campaign managers of candidates, otherwise known as "transfer brokers" paid the ten dollars transfer fees for voters to have their names transferred into the electoral roll of the candidate. There were voters who were transferred without their prior knowledge or consent. NIANGO et al. is concerned that the ten dollar transfer fee is unaffordable to many of the ordinary voter. There is also concern that transfer voters were paid monies, apart from the transfer fee, to vote in another constituency. NIANGO et al. is concerned that the practice of voter transfer provided unfair advantage to candidates who had access to "funds" and thus able to financially induce voters to transfer and vote for the banker candidate. This practice is contrary to principles of free and fair elections.

### 2.1.3 Approvals for voter transfers

Nauru in the past had abolished two Local Councils at different times. Currently, Nauru does not have a Local Council. When the first Council, the Nauru Local Government Council, was abolished, it was replaced by two institutions: Nauru Island Council (later abolished) and Nauru Council. The Nauru Island Council was vested essentially to work with communities, island beautification and district waste management. The Nauru Council was vested in the government Cabinet Ministers and inherited certain functions of the abolished

Nauru Local Government Council. One of these functions is the transfer of voters from one constituency to another. It used to be that Local Council Chiefs and Councillors verified the genuine “substantial connections” of voters to the respective destination district, thus base on this, Councillors approved or rejected applications. Today Cabinet Ministers, vested with the functions of the Nauru Council, approve and reject the transfer of voters. Cabinet ministers stand for parliament. NIANGO et al. are concerned that this practice that allows cabinet ministers to approve or reject the transfer of voters is a conflict of interest, undermines the perception of impartiality in the management of the electoral roll and contrary to principles of good governance.

#### 2.1.4 Independence of Media

In lead up to the Constitutional Referendum (February 2010), four non-government organizations namely Nauru Landowners Association, Community Paralegals, Nauru Legal Society, and NIANGO jointly called a public meeting on the proposed referendum amendments to the Nauru Constitution. The Referendum Team of five members who provided voter information on the proposed referendum amendments also attended the meeting to facilitate on issues. A summary report on the issues raised during the meeting was voice recorded onto DVD. The Australian Media Consultant to Nauru Media agreed to play the DVD as part of community participation on the government-owned Radio Nauru. Copy of the DVD was also provided in prior days to two Nauruan Media employees, the Programmer and the Radio announcer. The DVD was broadcasted once and after that it was never replayed. The Media Consultant told NGO representatives that the information was defamatory and wrong on certain points. He was informed that the certain points in question were provided by the Australian Assistant Parliamentary Counsel, also counsel to the Referendum Team and present at the public meeting. There was never any follow-up by Media on the “wrong and defamatory” allegations. The Media Consultant advised the NGOs that there would be organized a public debate between the NGOs and “them”. “Them” was never identified and there was never a public debate. The matter died thereafter. NIANGO et al. is concerned that independence of media is not an option with the government-owned radio station. To stifle views other than that of government view is to stifle people from exercising the right of making a choice through debate and discussion.

#### 2.1.5 Raised fees on government information

To increase government revenue (2004/05 budget) fees were introduced and/or increased on certain information including births, deaths & marriage certificates and matters on landownership. Such fees have made such information unaffordable to many people who are already struggling with their livelihoods given the current economic conditions. For example: the Directorate of Lands & Survey charges \$4 to photocopy land records per A4 paper; \$8 to copy maps per A4 paper; \$24 to print plans per AO size paper; \$10 consultation on all records reference minimum of 30 minutes and \$20 for every corner peg at every boundary relocation. The Nauru Lands Committee charges \$4 to peruse per page of the Land Register Book; \$10 per page to copy the Land Register Book; \$10 for general research on coconut lands and phosphate lands; \$10 for copy of Nauru Lands Committee minutes for Nauru Court proceedings; \$10 for copy of Nauru Lands Committee correspondence for Nauru Court proceedings; \$10 research fees for land disputes; \$10 land transfer transaction per document; and, \$10 for copy of beneficiaries Estate per page. Verification of land ownership is very critical today as land provides valuable income to many families who cannot find work, the

unemployed, the unskilled and women and single parent families with young children. Landowners receive income through rentals, leases and phosphate royalties. Knowledge and access to such information provides people, especially the vulnerable, with opportunity to a standard of living adequate for health and well-being of themselves and families.

#### 2.1.6 Access to information on landownership

Landowners have great difficulty accessing information on phosphate lands. Landowners are concerned that phosphate soil and coral pinnacles have been extracted from their lands without their knowledge and consent, and that they have not been fairly compensated. Landowners are not provided with information as to the tonnage of phosphate and coral pinnacles that have been extracted from their lands. Despite landowners requests for such information to be provided, the Nauru Rehabilitation Corporation which is engaged to mine phosphate, has released little to no information to inform landowners of activities happening on their lands. People have a right to information on their properties. In this case, information on phosphate lands is critical to landowners because many of them depend on the income that phosphate royalties provide. Income from lands enable landowner opportunities to health, education and to a standard of living for the well-being of their families.

#### 2.1.7 Nauru Phosphate Royalties Trust Fund

The Nauru Phosphate Royalties Trust Fund (NPRT) is a statutory body that holds several trust accounts one of which is the Nauru Landowners Royalties Trust Fund. For every tonne of phosphate extracted, some percentage is invested in the Landowners Trust Fund against the account of the relevant landowner/s. In 2004, assets of the Nauru Phosphate Trust Fund were seized by receivers to repay national debts with General Electric Corporation. Today, the residual monies of the Trust Fund after debt repayment remains with the receivers. Landowners are concerned that they are not being properly informed of the status of their accounts remaining with the Landowners Trust Fund. Moreover, for many years now, NPRT has not been tabling in parliament annual reports which is a legal requirement. NIANGO et al. are concerned that the lack of information concerning the property of people violates the right of own property and takes away the opportunity from people to make informed decisions on their finances which will impact on their ability to provide for their personal well-being, education and health for their children, food security and other family plans.

#### 2.1.8 Proposed Intergenerational Trust Fund

During 2009, there was proposed to establish an Intergenerational Trust Fund (ITF) to provide a vehicle to put aside and invest a proportion of government royalties from the new phase of secondary mining of phosphate and associated minerals. Although there were planned to be public consultations regarding the Fund proposal, government instead issued a page of frequently asked questions for public information. Government was of the view that since investment into the Fund did not involve landowners funds, then there was no need to consult with the public. Landowners were concerned that government did not own lands and therefore it could not earn royalties from phosphate, and that public consultations were necessary so as to take into account the views of the Nauruan public in such a matter of importance to the security of people.

NIANGO et al. is concerned that public consultation was not permitted on a matter as important as potential income for people and that the matter involved the use of their property.

### 2.1.9 Financial Intelligence Unit (FIU)

On 2 July 2010, the Speaker of Parliament read a letter to the House regarding members of the Financial Intelligence Unit (FIU) presenting a “wide ranging search” warrant to the owners of the Western Union Office and proceeded to remove documents from the Office. In the letter to the Speaker, the owners quoted that one of the people who came to collect documents said, “...we can do what we like, we can take anything we want to ...” The owners stated also in the letter that the business of Western Union is to transfer money both into and out of the country and if the people making the money transfer have correct documents and identification the transfer may proceed. There is the grave concern that people are not aware of their rights as to the powers and authority of government agencies, and certainly in this case, the Financial Intelligence Unit. The lack of public information and public education denies people the right to know the proper functioning and processes of responsible government that is essential in a free and democratic society.

## 2.2 STANDARD OF LIVING, HEALTH AND WELL BEING

Phosphate has been the singular industry and cornerstone of Nauru’s economy. Phosphate is a non-renewable resource and this poses real problems if alternative industries are not created. During the late 1990s, mismanagement of trust funds and other financial sectors coupled with the halt to phosphate mining, Nauru fell into a massive economic decline. People lost all forms of income: savings in the national bank, investments in the Trust Fund, Provident Fund and Superannuation and land rentals and leases were not paid. People felt the full impact of the crash when wage earners were retrenched, workers did not receive pay for a long time, wages slashed, electricity blackouts, petrol shortages and food prices shot up. Although people are engaging in fishing to supplement family diets, the majority of the people still depend heavily on imported goods and food. The cost of living on Nauru has shot up and remains very high.

### 2.2.1 Provident Fund/ Superannuation Fund

Government Provident Fund and Superannuation Fund established for the purpose of providing pension for retired contributing government employees have been stopped for over ten years now as result of mismanagement of national resources. Retirees as a result do not receive pension that would have been provided through the Provident Fund or Superannuation Fund. There are very remote employment opportunities for retirees, and even more so for women. When retirees are denied this pension payment, they do not have the capital to start up some income earning activities and/or prevented from further financial investments to provide for the years of retirement.

NIANGO et al. is concerned that non-payment of the pension denies the retiree protection against unemployment and the right to social security of which the employee is entitled to realization of the economic, social and cultural rights indispensable for his/her dignity and the free development of his/her personality. There is the concern that there have been no necessary action taken to progressively realize the property of people and social security.

### 2.2.2 Court decisions on land disputes

Land disputes are brought before the Supreme Court. In some cases, royalties due to landowners for the phosphate extracted from these lands are kept in safe-keeping with RonPhos, mining company, to pay out to respective landowners after the Supreme Court has made decision. In two cases, landowners with land dispute cases before the Supreme Court were assured of payment when the Minister of Commerce, Industry & RonPhos and also responsible for RonPhos, in public statements, stated that the due royalties were locked in safekeeping pending the outcome of the court decisions. The Supreme Court had decided on the cases, but landowners were told that the money was no longer with RonPhos. The non-payment of royalties to landowners deprives them of opportunities to gain adequate standard of living and well-being of families, health, school and food. This situation is further exacerbated when the Supreme Court has passed decision for landowners to be paid their due royalties for phosphate taken from their lands.

### 2.2.3 Rehabilitation of mined-out phosphate lands

In 1992, Nauru and Australia signed compact of settlement agreement on lands mined-out under Australian administration. In 1994, the Nauru Rehabilitation Corporation (NRC) was established. Rehabilitation of the mined-out phosphate lands has not commenced to this day. Instead the NRC is busy mining phosphate on the premise that revenue earned from mining will be used to pay for rehabilitation of lands. There is real concern that the prolonged delay to rehabilitate land to a useable state impacts on the living conditions of people and standard of living given the growing population and diminishing land available for housing, gardening and agriculture, increase of lifestyle diseases and degrading coastal environment as result of rapid urbanization.

## 2.3 CHILDREN OF NAURU

In August 2009, NIANGO organized a national consultation on family health and child safety in Nauru. This was in context of growing community concern regarding longstanding and emerging issues that faced the children of Nauru. Moreover, in the early course of the economic crisis, it became apparent that children were among the first to be neglected. A range of concerns were raised, prime of which included but were not limited to children victims of domestic violence, sexual abuse and incest situations; orphan children after the early loss of both parents to lifestyle diseases; the high rate of school truancy reflected in the high illiteracy rate; increase in crimes committed by children; and, discontinuation of government child allowance.

Currently, there is no defined government focal point for children. However, individual departments conduct their own programmes focused on children, the most obvious being education, health and sports. In recent years, new civil society organizations have been created in response to certain identified problems: 4S Literacy Tutoring School, Disability School, Able/Disable Organisation and more recently and interest group on children with mental health. NIANGO et al. are concerned that care for children is indeed being neglected given the current economic crisis.

### 2.3.1 Child allowance

For more than ten years now, Government social security allowance for dependent children under sixteen years of age was among the first to be discontinued when the Nauru fell into the economic crisis. In the current situation, child allowance is all the more critical to the livelihood of the child as many parents are

retrenched from work, unable to find long term employment, many young parents do not have the skills or education thus flexibility to move into various jobs. Discontinuation of the child allowance impacts on the livelihood of children that it prevents children from accessing opportunities to some standard of living adequate for their mental, spiritual, moral and social development. The concern is that no measures have been undertaken by government for progressive realization of this allowance for children.

### 2.3.2 Children with mental health conditions

Young people who have critical mental health conditions are left unattended and roam freely around the island. There have been many cases of abuse towards women and children with mental health condition. One girl has been made pregnant twice. Both children were taken from her by relatives because she is in no fit mental and physical condition to look after the children. Father(s) of the children remain unknown. A man has been reported to police for raping a young boy with mental health condition. Some of these mental health victims go without food for several days because families neglect to look after them. Most of them are treated like society outcasts, have no resources to clothe and keep personal hygiene. The concern is that people with mental health are denied a standard of health and well-being and that children with mental health are further denied protection or treatment of their mental health condition when they are left to freely roam the island.

## 2.3 FOREIGN AID

Since the collapse of the Nauru economy, Nauru has become dependent on foreign aid. The amount of donor assistance to Nauru has increased considerably since 2005. Donor grant assistance has increased from \$11.8million in 2006-07 to an estimated \$30.7 million in 2009-10 (NSDS 2009). These figures exclude assistance provided "in kind" by donors through direct support or the provision of technical assistance. This assistance has been spread through all areas of the Nauru economy.

### 2.3.1 Working conditions

Nauruan employees of Australian-owned HK Shipping Company, contracted for security services to look after Australian government rented buildings, have criticized their working conditions but fear to speak out might they lose their jobs. Employees are concerned that there is no contract between the employer and employee; they work eight hours a day, seven days a week; have no days off; and, no leave entitlements. In the past two years, three Nauruan security workers working for the HK Shipping Company have died of heart attacks. Fellow workers blame the premature deaths on the stressful working conditions under which they work. NIANGO et al. is concerned the absence of protection of employees working for foreign companies denies them just and favourable conditions of work including periodic holidays with pay.

### 2.3.2 Donor construction contracts

In early 2010, public bids for two AusAid funded construction contracts were awarded to a Fijian Company in partnership with a Nauruan construction company. The two bids were to refurbish part of the hospital building and to construct prison quarters for women. It was later disclosed that the Nauruan company was owned by the Nauru Australia Football Association. Documents later revealed that the partnership consisted of 51% ownership by the wife of the Minister of Health/ Justice/ Sports. NIANGO et al. is concerned that lack

of transparency of award of bids to donor programmes invites abuse to the system through lack of information on donor contract programmes. Ultimately, this lack of transparency deprives people of opportunities to compete for contracts or provision of services that bring about opportunities to the right to a standard of living adequate for health and well-being of families.

### 2.3.3 Community development

The Government of Taiwan pays each member of Parliament a monthly allowance for community development. This allowance is directly paid to members of Parliament and not received via government Treasury and therefore it is not reflected in national accounts. The amount received remains unknown because it has never been disclosed to the public. Communities receive different amounts from their respective parliamentary representatives. Locals refer to this money as “grassroots”. NIANGO et al. is concerned that as a matter of good governance such financial donor assistance are not reflected in the national accounts. This lack of information and thus transparency invites abuse to the system as ultimately it denies people the right to information which provides people opportunity to debate and discussion to promote responsible government.

### 2.3.4 Rape charges dropped

A young Nauruan girl reported to the Police that she was raped by the expatriate Resident Magistrate. The magistrate was employed through bilateral assistance programme to Nauru. The girl later withdrew the charges and the case was dropped by both the police and the Justice department. The magistrate departed the island soon after. NIANGO et al. is concerned that rape charges were dropped by authorities before it could be taken to court thus sending out a message that such acts of perpetration on women is condoned.

## 4. ACHIEVEMENTS, BEST PRACTICES, CHALLENGES AND CONSTRAINTS

NIANGO et al. commends the formulation (2005) and recent review (2009) of the National Sustainable Development Strategy , 2005 – 2025 that sets out Nauru’s major development priorities and plans for the next twenty years. It is also noted the growing of civil society consciousness in national development issues and the sprouting of new civil society organizations in response to specific social issues. It is also commended that the government has created a safe house for women and children, victims of domestic violence. Also that through the kind assistance of NZAID, the Nauru Police Force has instituted a Domestic Violence Unit. Through generous donor assistance, education and health services for Nauruan children have vastly improved. To name but a few: the refurbishment of infant and primary schools, rebuilding of Nauru Secondary School, and on the health side, an extensive immunization programme for young children.

## 5. RECOMMENDATIONS – CAPACITY BUILDING AND ASSISTANCE

### 5.1 International Obligations

NIANGO urges for the Government of Nauru to submit the initial 2-year report on the CRC, and also to ratify the Optional Protocol to the CRC on the sale of children, child prostitution and child pornography. Also that the Government ratifies the ICCPR, ICESR and CEDAW and domesticates such international standards where necessary.

## 5.2 Freedom of Information

As matters of priority to promote freedom of information, the following are recommended:

- the right to information to be recognized in the Constitution of Nauru and by development partners, and in regional and international agreements;
- greater public education and consultations on the functions, instrumentalities of government and processes of government;
- enable ease of access to and release of information to people regarding their lands, properties and other incomes due to them
- independence of media that promotes community debate and discussion
- government develops and implements appropriate civic and voter education programmes;
- government reviews the Electoral Act as per recommendations made by Forum Secretariat Observer Missions for the General Elections of 2007 and 2008;
- To promote the right to freedom of information, NIANGO requests that government reduces fees on government information that impact on livelihoods of people; and,
- The international assistance to develop and install a community radio that will be managed and operated by NGOs/ community based organizations and other civil society organizations.

## 5.3 Standard of living, health and well-being

- the government and international assistance to progressively realize monies owed to Nauruans including income on phosphate, unpaid salary, Provident Fund and Superannuation; and,
- the government and international assistance to start up the rehabilitation of the mined-out phosphate lands.

## 5.4 Children of Nauru

- the government to institute a government focal point for children;
- Progressive realization of the child allowance; and,
- International assistance to support and conduct a national survey on the status of children on Nauru that focus on violence and abuse perpetrated on children.

## 5.5 Foreign Aid

- Development partners to implement transparent aid programmes.

## 6. CAPACITY BUILDING

NIANGO et al. calls on the Government of Nauru, in conjunction with the United Nations Human Rights Council, to implement training in the following areas :

- Human rights training for civil society;
- Managing and operating a community radio for civil society; and,
- Public service and state-owned entities training on the role and importance of NGOs/ CBOs/ CSOs in good governance and human rights reporting and accountability.

*NIANGO thanks the UN Human Rights Council for this opportunity to participate in the process of the UPR.*