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### UNIVERSAL PERIODIC REVIEW

#### Report of the Working Group on the Universal Periodic Review

**Tonga \***

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## **Introduction**

1. The Working Group on the Universal Periodic Review (UPR), established in accordance with Human Rights Council resolution 5/1 of 18 June 2007, held its second session from 5 to 19 May 2008. The review of the Kingdom of Tonga was held at the 14th meeting on 14 May 2008. The delegation of Tonga was headed by His Excellency, Mr. Sonatane Tu'akinamolahi Taumoepeau Tupou, Minister for Foreign Affairs, Acting Minister of Defence and Acting Governor of Vava'u. For the composition of the delegation, composed of 5 members, see annex below. At its 17th meeting held on 19 May 2008, the Working Group adopted the present report on the Kingdom of Tonga.
2. On 28 February 2008, the Human Rights Council selected the following group of rapporteurs (troika) to facilitate the review of the Kingdom of Tonga: Nigeria, Qatar and Mexico.
3. In accordance with paragraph 15 of the annex to resolution 5/1, the following documents were issued for the review of the Kingdom of Tonga:
  - (a) A national report submitted in accordance with paragraph 15 (a) (A/HRC/WG.6/2/TON/1);
  - (b) A compilation prepared by the Office of the High Commissioner for Human Rights (OHCHR), in accordance with paragraph 15 (b) (A/HRC/WG.6/2/TON/2);
  - (c) A summary prepared by OHCHR, in accordance with paragraph 15 (c) (A/HRC/WG.6/2/TON/3).
4. A list of questions prepared in advance by Latvia, the Netherlands and the United Kingdom of Great Britain and Northern Ireland and was transmitted to the Kingdom of Tonga through the troika. These questions are available on the extranet of the UPR.

## **I. SUMMARY OF THE PROCEEDINGS OF THE REVIEW PROCESS**

### **A. Presentation by the State under review**

5. At the 14th meeting, on 14 May 2008, His Excellency, Mr. Sonatane Tu'akinamolahi Taumoepeau Tupou, Minister for Foreign Affairs, Acting Minister of Defence and Acting Governor of Vava'u, introduced the national report, and expressed the gratitude of the Kingdom of Tonga to those members of the Working Group who provided questions in advance. He indicated that Tonga welcomed the advent of the UPR process as a means of ultimately improving the state of promoting and protecting human rights at a national level, and shared the view of other Member States that the UPR process is one that should ensure complementarity with existing mechanisms so as to avoid any duplication. His Majesty's Government is therefore committed to the success of this UPR process and more broadly to the advance of the discourse on human rights at the international level.
6. In preparing its national report, like other small States, Tonga was challenged by time constraints and pre-existing acute capacity constraints to prepare a report that was both meaningful and based upon broad consultations within Government and with members of civil society and NGOs. To offset these constraints, His Majesty's Government welcomed the generous assistance received from New Zealand in the timely preparation of its national report. Consultations with the Civil Society Forum, a group of 49 civil society organizations operating within the country, were an integral part of the preparatory process. Consultations also took place with a forum representing church leaders, the Tonga Chamber of Commerce and the Tonga Media Council. Whilst the period

for consultations was short, the nature of those consultations was intensive and constructive, and they were conducted with a spirit of mutual respect and understanding. The resulting national report as submitted therefore represents a consensus of views on its contents.

7. The Kingdom of Tonga is a constitutional monarchy, and the foundation for the promotion and protection of basic human rights is grounded in the 1875 Constitution promulgated by King George Tupou I. For its time, the Constitution was visionary and farsighted. For the past 132 years, and throughout the successive reigns of King George Tupou II, Queen Salote Tupou III, King Taufa'ahau Tupou IV and presently His Majesty King George Tupou V, the Constitution continues to dutifully serve as the overarching fabric that binds Tongan governance and Tongan society together. The Constitution has been amended from time to time, as required. Following 70 years as a British Protectorate, the Kingdom of Tonga joined the comity of nations in 1970 and, after having been an active member of the United Nations agencies for many years, in 1999 it joined the United Nations as a fully-fledged Member State.

8. He informed that last year, Tonga hosted the annual meeting of the 16 members of the Pacific Islands Forum, the foremost political grouping within the region comprising Australia, the Cook Islands, the Federated States of Micronesia, Fiji, Kiribati, the Marshall Islands, New Zealand, Nauru, Niue, Palau, Papua New Guinea, Samoa, Solomon Islands, Tonga, Tuvalu and Vanuatu, and as such currently holds the chairmanship of the group. As the first member of the Pacific Islands Forum to take part in the UPR process, there is added significance of this review from a regional perspective for those members of the Forum who will follow and who are also Member States (14 of the Forum members, with the exception of the Cook Islands and Niue). One of the ongoing initiatives within the regional Pacific Plan is concerned with strengthening the promotion and protection of human rights, including the ratification of international human rights instruments.

9. Tonga is party to the International Convention on the Elimination of Racial Discrimination (ICERD) and the Convention on the Rights of the Child (CRC) and admittedly is overdue in its reporting duties. However, far from being uncooperative or unwilling, the head of delegation noted that it must be understood that the financial, technical and capacity constraints to provide these reports to the relevant treaty bodies on a regular and timely basis are challenging and quite simply overwhelming. In spite of these constraints, Tonga has provided 14 reports to the Committee on the Elimination of Racial Discrimination (CERD) and the initial report to the Committee on the Rights of the Child has been overtaken by the events of November 2006. The reporting regime becomes in some ways an additional disincentive to the consideration of other international human rights instruments.

10. The head of delegation indicated that the UPR process may be a positive catalyst for a renewed and innovative consideration of those remaining international human rights instruments. As has been highlighted in the national report, Tonga is embarking on a path of significant constitutional and political reform to determine a more democratic form of governance but also one that is a reflection of the Kingdom of Tonga – its values, its norms, its culture and its people. Not surprisingly, the debate has been properly robust and despite the recent challenges of November 2006 and its aftermath, the commitment to a more democratic path remains steadfast. The peaceful and orderly conduct of last month's elections reflect a quiet determination to further the debate on this reform and to resolve issues of divergence through dialogue and mutual respect and understanding.

11. In conclusion, he emphasized and reaffirmed Tonga's commitment to the UPR process and the implications of its outcome for the strengthening of the understanding and advocacy of human rights at a national level.

12. The Permanent Representative to the United Nations, Ambassador Fekitamoeloa 'Utoikamanu, further provided responses to the questions posed in advance. She indicated, in response to the question posed by Latvia, that the Government received a request for interaction with a Special Representative of the Secretary-General on human rights defenders concerning the alleged treatment of citizens by the security services during the November 2006 riots. For reasons explained in the national report, such interaction was not under the circumstances considered appropriate. However, the ongoing constitutional and political reform process may give rise to an opportunity to consider the issue of standing invitations for special procedures in the future.

13. Regarding the question on the equality of rights between men and women, Tonga's patrilineal land tenure system also appears to disadvantage younger male siblings as well as female ones. Regarding the amendment of the land laws which the Tongan Government proposes in order to allow women to inherit land where there is no male heir, she indicated that whilst the precise scheduling of amendments of the law may not yet be determined, any amendments to this system will be guided by the task and a balanced consideration of the interests involved. Under the current system of leasehold, for example, nothing prevents any man or any woman from acquiring or exploiting any leasehold land and disposing of the leasehold interest as they see fit. Further, any widow or eldest daughter may have a life interest in family land pending the majority or creation of a new male heir. As for child support, there is current legislation that covers the maintenance and support of children. Furthermore the cultural notion of the extended family often provides a social safety net and support for children in need.

14. In relation to the treatment of detainees and prisoners by security forces, she indicated that the Constitution and the criminal justice system in Tonga follows the modern common law approach of according suspects bail as of right, enables them access to counsel and family and to be brought before a magistrate within certain time limits. A further process overlaying access by NGOs to detainees and prisoners would be unnecessary.

15. On the question related to reporting obligations to treaty bodies, Tonga's reporting has been lax but this has been due to overwhelming and serious financial, technical and capacity constraints, as well as other competing domestic priorities. At a regional level, it should be noted that the Government of New Zealand is exploring with OHCHR the interface between customs and human rights in the Pacific to identify ways to accommodate local values and customs with universal human rights standards and barriers to the ratification of international conventions. It is prepared to consider innovative ways and means, perhaps as a result of the UPR process, to not only improve its reporting on instruments to which it is already party but also to include those outstanding instruments to which it not yet a party. The experience of other regional partners may also bear on this exercise.

16. On the question of the adherence to a strict timetable for the process of constitutional and political reform, the Legislative Assembly passed a resolution setting out an indicative timeframe until 2010 to guide the reform process. A process of such fundamental change ought to properly proceed at a pace that is neither hasty nor superficial. For a lasting durable change to rightfully take place in Tongan society, stakeholders deserve time to enable them to reasonably absorb and reassure them of what lies ahead. As an example, the Government has embarked on a reconciliation and civic education programme to explain constitutional options at the village level. A potentially useful outcome of the UPR process, particularly from its implementation fund, would be further financial and technical assistance to continue these efforts.

17. On the role played by civil society in the drafting of the national report, as reflected in the Minister's statement, Tonga's national report was prepared with the assistance of the Government

of New Zealand which provided an independent human rights expert. The process of the preparation of the national report resulted not only in a broad consensus on the national report's contents but also had practical benefits for both civil society and the Government. Such a benefit is the request for funding from the UPR implementation fund to assist civil society to participate in and conduct a programme of civic education.

18. On the question of a national human rights institution, the capacity restrictions already mentioned before makes the establishment of a fully functioning national human rights institution impractical at the present time. However work is in progress at regional level work on practical suggestions for the establishment of human rights institutions in the countries of the Pacific under the Governance Pillar of the Pacific Plan.

19. On the ratification of the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) much work had been undertaken on the review of the implications of accession, as noted in the Strategic Development Plan Eight. It is now at a stage where it is ready for consideration by the Government. The representative of Tonga noted that its ratification, at this time, may form part of a series of outstanding human rights instruments to be considered as an outcome of the UPR process and within the framework of the ongoing constitutional and political reform.

20. On the question by the United Kingdom regarding the urgent appeal sent by the Special Representative of the Secretary-General on the situation of human rights defenders in respect of events surrounding the November 2006 riots, she indicated that those matters are before the courts.

21. On the issue of the protection of the freedom of the media, she noted that in addition to the protection provided by the Constitution and other related legislation, the Government has cooperated with the media to establish an independent media council. It has facilitated short training courses for both Government officials and private sector in media presentation and public relations. The Government further supports the development of a full professional media and journalism course. An example is the certificate and diploma in media and journalism, which is a product of the commitment of the media industry, the vocational education sector and Government to provide affordable access to quality accredited training and professional development in media and journalism. The Tonga Institute of Higher Education, together with five other Pacific Island technical institutions (with the support of their respective Governments) and the financial assistance of the Government of Australia has enabled the establishment of this course.

## **B. Interactive dialogue and responses by the State under review**

22. During the ensuing interactive dialogue, 34 delegations made statements praising Tonga for its participation in the UPR process, its high -level representation and the quality of both its presentation and its national report.

23. Mexico acknowledged Tonga's progress in human development, health and education with gender equality, and noted that international human rights principles were enshrined in the Constitution, despite the fact that Tonga is not party to important human rights treaties. It stressed the importance of Tonga's requests to the international community to develop its capacities and for technical assistance for human rights. It recommended to Tonga and to relevant actors to attentively follow up the requests for capacity-building and technical assistance for human rights. It requested information on Tonga's efforts to promote greater awareness of human rights and integrate human rights in the education system at all levels, and provide human rights training for public officials, as well as on the participation of civil society in the promotion and protection of human rights. Mexico recommended that Tonga strengthen its efforts in the area of human rights education, training of

public officials and participation of civil society in the promotion and protection of human rights, including through international and regional cooperation. It also recommended that Tonga favourably consider ratifying the core international human rights treaties within a reasonable period of time and participating more fully with international human rights mechanisms, especially special procedures of the Human Rights Council. It also valued wide-ranging political reform in the country.

24. Algeria expressed its wish to see a permanent representation in Geneva of the group of the Pacific Islands. It recommended that Tonga continue to uphold the core values contained in the Tongan constitutional and customary history in its work to ensure full compliance with human rights and fundamental freedoms for all Tongans. It noted that UNDP reported that women have equal access to education and health, and are not far apart in employment, although gender equality is still problematic in land holding inheritance law and in electoral politics. It noted that in government departments, women do not enjoy a balance with men, although in 2005 the first woman was elected as member of Parliament. As recommended already by CERD, Algeria recommended that Tonga enact laws to protect women in employment free from any form of discrimination. It commended Tonga on its high literacy rate and achievements in higher education. It recommended that Tonga continue to promote its ambitious goals in education and improve the ratio of women in leading positions in the country. Algeria also encouraged Tonga to create, if not a national human rights institution, at least one at the level of the group of islands it belongs to, so that they may more effectively improve their human rights performance and implement their human rights obligations.

25. New Zealand commended Tonga on its willingness to engage actively in dialogue and to share its experience with others in identifying and overcoming human rights challenges. It noted that the Constitution of 1875 is currently undergoing reforms to provide for a more democratic and accountable form of government. It asked whether a code of conduct for the media is under consideration and about the setting up of the Anti-Corruption Commission. It also asked if more work is required to ensure the protection of civil and political rights in law and in practice. Furthermore, it noted the efforts made by Tonga to combat violence against women and recommended that Tonga ratify CEDAW as part of the follow-up to the UPR. It recognized the legal constraints of Tonga when commenting on accusations of heavy-handed treatment of prisoners by defence and police personnel during the riot of 2006, but asked if defence and police personnel are receiving any human rights training. It recommended that Tonga advise potential donor agencies of the type of technical assistance that would help to meet its treaty body reporting obligations.

26. Italy noted that while Tonga's Strategy Development Plan 8, entitled *Looking to the future, building on the past*, encompassed human rights issues and aims at their full respect, Tonga is not a party to the International Covenant on Civil and Political Rights (ICCPR) or the International Covenant on Economic, Social and Cultural Rights (ICESCR), and recommended that (a) Tonga consider the ratification of the two Covenants; and (b) ratify the Rome Statute of the International Criminal Court. Italy commended Tonga on the moratorium on executions in place since the 1980s and (c) encouraged the Tongan Government to consider a complete abolition of the death penalty.

27. The United States of America enquired about the status of security forces who were accused of physically abusing detainees arrested following the November 2006 riots, and asked if the security forces have been held accountable for these abuses. It recommended that Tonga launch a credible investigation into reports that surfaced following the riots and prosecute offenders.

28. Netherlands commended Tonga on its human rights record and noted the improvements made despite the current political transition the country is undergoing since the unrest in November 2006. It enquired about additional measures taken to ensure equal rights between men and women in the area of child support and inheritance. While noting that Tonga is party to the CRC and the ICERD, it (a) recommended that Tonga take measures to ensure accession to the core human rights instruments such as ICCPR and ICESCR. Although Tonga is not party to ICCPR, it (b) recommended that Tonga amend legal provisions that criminalize some forms of sexual activity between consenting adults and decriminalize sexual activity between consenting adults. It (c) recommended also that Tonga facilitate extended access to prisons for NGOs and that it implements the recommendations contained in the report of the Community Para-Legal Taskforce on Human Rights with regard to persons detained by the security forces.

29. Bhutan noted that the international community could play a critical role by welcoming Tonga's openness to constructive engagement through dialogue and cooperation in the field of human rights and supporting the Government's efforts. It noted that many human rights principles were found in the Tongan Constitution and its ancient customs would continue to strengthen efforts towards greater constitutional and political reforms. Bhutan appreciated Tonga's policy to consider ratification of international treaties, and asked about its experience in meeting the challenges of treaty reporting obligations, how OHCHR supported such efforts, and whether this has been a factor when considering the ratification of other instruments.

30. China welcomed Tonga's work in improving the standard of living of the population. It also noted the positive results achieved by Tonga in the areas of education, health and poverty reduction, achieving several of the Millennium Development Goals. On civil and political rights, it noted that Tonga is actively working to promote human rights education and to strengthen the training of police in human rights. It noted with appreciation Tonga's openness in presenting its developments priorities and challenges and asked how the results of development were distributed and, within the framework of globalization, on the steps taken by Tonga to protect the cultural rights and the cultural identity of its population.

31. Canada recognized that Tonga's 132-year-old Constitution enshrined basic human rights and fundamental freedoms and noted Tonga's commitment to further democratization, political reform and achievement of the Millennium Development Goals. Canada raised concerns about the violation of right to freedom of expression by imprisoning journalists and (a) recommended that Tonga take measures to ensure that a diversity of opinions can be expressed. It noted that Tonga maintains criminal sanctions against some forms of sexual activity between consenting adults and (b) recommended that Tonga amend its criminal laws so that sexual activity between consenting adults is not a criminal offence. It noted a joint appeal by three special procedures on the treatment of detainees and prisoners by security forces and enquired about steps taken to implement their recommendations. It (c) recommended that Tonga consider the ratification of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT) and (d) the implementation of recommendations by special procedures so as to provide institutional safeguards against harsh treatment by police and security forces. It also (e) recommended that Tonga promote human rights education programmes for police, security and penal personnel. It also (f) recommended that Tonga take steps to eliminate graft within the public sector so that the enjoyment of human rights is not imperilled by rent-seeking within Government. It noted plans to continue considering to establish a national human rights institution and (g) recommended that Tonga pursue its efforts to create a national human rights institution under the Pacific Plan.

32. France enquired about steps taken or envisaged to promote the rights of human rights defenders and to ensure the right to a fair trial. It also enquired about the measures Tonga plans to



adopt to promote freedom of expression and freedom of press. France noted and encouraged Tonga's intention to establish a national human rights institution, and asked on a timetable in that regard. It recommended that Tonga adopt measures to strengthen the protection of freedom of expression, information and the press. It also recommended to Tonga to establish a national human rights institution in accordance with the Paris Principles.

33. The Permanent Representative of the Kingdom of Tonga to the United Nations indicated that regarding human rights education, as mentioned in the national report, human rights have been incorporated into social studies and in the studies syllabus. Currently the curricula for primary and secondary schools are being reviewed with the support of New Zealand and the World Bank, and she reiterated that the Ministry of Education is committed to incorporating human rights issues in the curricula. As regards training of public officers, she noted the public awareness programmes on legal rights of women run by the Crown Law Department and other training programmes for NGOs with the support of the Government and donor partners. She also noted the value of national reconciliation and civic education programmes financed by the Government. Regarding the establishment of a national human rights institutions or a regional institution, human rights are dealt with in the Pacific Plan under the governance pillar, and the practicalities of setting up such a regional institution are currently being explored with the Commonwealth Secretariat and the Forum Secretariat. With regard to training of defence and police personnel, she noted that Tonga defence services have contributed to peacekeeping and peace building operations, which has required specific pre-deployment training on the specific field of human rights for post-conflict States. These trainings have led to professional civics and human rights training. Police trainers also attended the Commonwealth Secretariat Human Rights Training Course in March 2007, with the assistance of New Zealand and Australia, and she confirmed that these trainings and the commitment to the professionalism of the police will remain a priority of the Government.

34. With regard to the question on a code of conduct for media, the certificate and diploma in media and journalism, as mentioned in the national report, is a product of the commitment of the media industry and the vocational sector to provide affordable access to quality training and professional development. Tonga noted that it sees value in the Media Council developing a national code of conduct and would seek technical and financial assistance for this. On the issue of setting up the Anti-Corruption Commission, its enabling legislation was enacted in September 2007 and the law provides for the appointment of a commissioner and nine deputies, with a wide mandate to independently investigate and prosecute corruption, and the appointments are being finalized. This may strengthen the development of a leadership code aimed at establishing standards of conduct for all leaders in the public arena, both executive and legislative, with the possibility of bringing allegations of breaches to the code either to the Commission or the courts, as the circumstances require. On the issue of the death penalty, the representative of Tonga stated that it remains a part of the ultimate sanctions of criminal law, and that it was last imposed in 1982. She noted that as part of the process of the ratification of ICCPR, Tonga may consider the adoption of the Second Optional Protocol. In relation to the question on media and to the recommendations to enable freedom of expression, she indicated that the legislation referred to in 2003 was challenged and the Court made a ruling on the issue, to which the Government has abided. Regarding assistance provided to date by OHCHR, the UPR process was Tonga's first engagement with OHCHR. Accordingly, the national report makes specific requests for technical and financial assistance from the Human Rights Council. With regard to the question on equitable distribution of the benefits of development between the rich and the poor, Tonga has been involved in national development planning for over three decades and is currently in its eighth strategic planning period. She noted that Tonga has engaged in implementing pro-poor policies in line with its national commitments and in line with regional and international commitments such as the Millennium Development Goals. The Integrated Regional Development Programmes for each of the island

groups were designed to ensure that there is a balance in the provision of infrastructure and to provide an enabling environment for the private sector to operate and for the population to benefit. With regard to the question on cultural rights and cultural identity, she stated that this issue was specifically addressed in the Eighth Strategic Development Plan.

35. The Holy See noted with satisfaction that Tonga's traditional society is imbued by the values expressed in the Universal Declaration of Human Rights and has a strong extended family structure. It commended Tonga on the political reforms put in place hitherto and encouraged Tonga to continue the democratization process on which it has embarked so courageously. It also commended Tonga on its educational system but was concerned at the "disparented" children and the so-called deportees and enquired about measures taken to reintegrate these children in the Tongan society. It also noted that domestic violence remains an issue and that the inheritance laws discriminate women, and asked about measures to redress this situation, as well as on the steps Tonga plans to take to sign any of the other core international human rights instruments.

36. Cuba commended Tonga on its comprehensive development strategy in which the right to take part in physical and sporting activities has its proper place. It noted Tonga's achievements in the human development index, in advancing the legal and social status of women, the health system, free and universal education and the fight against poverty, combined with its institutional heritage and the political reforms of recent years. It asked what measures were taken by the national authorities to combat the growing unemployment among young people and prevent their drift into criminal activities, and to narrow the gap between high and low income groups.

37. Azerbaijan commended Tonga on the creation of the Anti-Corruption Commission. It noted that ICCPR, ICESCR and other human rights instruments are not ratified by Tonga. Noting the view of the Special Representative of the Secretary-General on the situation of human rights defenders, it sought information on how Tonga intends to broaden the relevant national legal framework in the light of the core human rights treaties. It also noted that although Tonga has ratified ICERD, it has not made a declaration in accordance with its article 14 recognizing the competence of the Committee to receive individual communications. It also noted that Tonga has repeatedly asserted to CERD that there is no racial discrimination in the country as defined in article 1 of the Convention, it sought information on the main obstacle to ratify the Convention for the purposes of preventive measures.

38. Switzerland welcomed the broad consultations for the drafting of the report, including with NGOs. Switzerland has followed closely the political reforms and welcomed the recent parliamentary election. It welcomed Tonga's interest bringing its national legislation in line with international human rights standards. It also welcomed Tonga's determination to ensure full trials related to the events resulting from the riots that took place in November 2006. It recommended that (a) Tonga continue with determination and speed the reform process they have begun. It also recommended that (b) Tonga ratify ICCPR and ICESCR, as well as CEDAW and CAT. If Tonga is unable to ratify because of technical difficulties related to reporting obligations to treaty bodies, Switzerland is ready to consider extending its support in terms of technical assistance to help on the drafting of such reports. It also sought further information on the programme implemented by the Ministry of Justice on education and human rights; on the right to land; and on the inheritance laws and their discriminatory provisions. It recommended that (c) Tonga consider repealing the discriminatory practice in the inheritance laws.

39. The Czech Republic enquired about the measures adopted to fight prejudice and stereotypes undermining the equality of women in the fields of inheritance, ownership to land and child support, and (a) recommended that Tonga amend legislation discriminating against women in the

fields of inheritance, ownership to land and child support. It also (b) recommended the decriminalization of consensual same-sex activity between adults. It also (c) recommended accession to the core human rights treaties, inter alia, ICCPR, ICESCR, CEDAW and CAT, and that Tonga submit regularly its reports to the treaty bodies of the conventions it is party to, like the Committee on the Rights of the Child and CERD.

40. Turkey, while noting that there is no national human rights institution, welcomed the establishment of a Pacific Complaints Commissioner as well as the Anti-Corruption Commission as important steps in enhancing the rule of law and the promotion of human rights. It noted Tonga's education indicators and the Tongan Education Support Programme. On the issue of domestic violence, it recommended that Tonga pursue its efforts to curb violence against women. It also recommended that Tonga consider ratifying the core human rights treaties such as ICESCR, ICCPR, CEDAW and CAT. It further encouraged Tonga to continue its endeavours towards better serving its people by securing a higher standard of human rights.

41. Latvia welcomed the fact that corporal punishment is prohibited in schools, but noted that it is lawful in the criminal system. It enquired about measures Tonga is planning to take to prohibit corporal punishment in all settings. Expressing concern at the number of children having to drop out of school, it asked about the measures taken to decrease it. Latvia also stated that Tonga should encourage extending a standing invitation to all special procedures in the nearest future.

42. Brazil welcomed Tonga's efforts and initiatives in human rights development but noted with concern that it has not yet acceded to the major international human rights instruments. It asked what concrete policies and laws were being developed to guarantee protection, equality and non-discrimination of women; what measures were taken to prevent domestic violence against women; and what considerations prevented Tonga's accession to and ratification of the major universal human rights instruments. It also asked what steps had been taken or were being planned to reform its legal framework to foster integration and harmonization of the provisions of these treaties in its national legislation. It recommended that Tonga take the necessary steps to accede to major international human rights instruments, particularly ICCPR and ICESCR, that it sign the Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography, and that it ratify CEDAW and the Optional Protocol thereto.

43. The Maldives indicated the vital engagement of international organizations and donor States to help Tonga undertake the reforms identified as imperative in the national report. It also indicated that the Special Rapporteurs could offer support in areas such as freedom of the press, independence of the judiciary and women's rights. It noted that the recommendations made by treaty bodies could contribute to encouraging international stakeholders, including OHCHR, to engage with Tonga and extend financial and technical assistance. It sought for more information on Tonga's views regarding the value of acceding to ICCPR and ICESCR as part of the constitutional review process and whether Tonga has considered engaging with selected Special Rapporteurs in order that they assist in the reviewing of human rights responsibilities, freedoms and obligations as part of the ongoing democratic reform programme.

44. Malaysia noted with encouragement the efforts made by Tonga in submitting and presenting its national report and noted the praiseworthy achievements in various fields, including economic and social spheres, despite the multiple constraints Tonga faced. It noted with interest the introduction of a court diversionary scheme, inter alia, to address the events surrounding the riots in November 2006. It asked whether Tonga is planning to expand the scope of offences to cover those beyond the November riot. It also supported the call on the international donor community to respond favourably to the Government's request for capacity-building and technical assistance.

45. The Permanent Representative of the Kingdom of Tonga to the United Nations acknowledged with thanks the offer made by Switzerland with respect to providing support for Tonga's reporting obligations to the treaty bodies. On the issue of deportees and their reintegration into Tongan society, she indicated that the Government is working very closely with NGOs and faith-based institutions to set up programmes to assist their reintegration, and donor partners are assisting the Government and the NGOs in that regard. On the issue of combating unemployment, Tonga has a very strong youth movement involved in training programmes to assist youth to find meaningful employment, and there are other programmes, such as rural development programmes, that provide support to setting up of small businesses. Furthermore, New Zealand has a labour mobility programme from which Tonga and other countries in the Pacific have benefited through the employment of seasonal workers, and Australia is considering a similar arrangement. On the issue of the scope of the diversion scheme set up specifically to deal with offenders from the November riot, she noted that this scheme had been successful, and it is anticipated that the scheme will continue and be expanded in the future. Regarding the abolishment of corporal punishment in all settings, Tonga ratified CRC in 1995, and has since then abolished corporal punishment in schools. The Tongan way of life is based on an extended family that sees children freely move and develop under the influence of extended family members with shared responsibility. Respect and dignity within this family unit are integral to social development. Violence against children is not tolerated in that village society. On the issue of the right to privacy and sexual activity between consenting adults, she noted the concerns raised with regard to the legislation and indicated that Tonga is an inclusive society with tolerant Christian values that require respect across differences.

46. Slovenia called exemplary Tonga's wide and comprehensive national consultations in preparing its report, and hoped that this would help in the context of the ongoing constitutional reform process. It also hoped it would prompt Tonga to consider signing or acceding to further international human rights instruments. Commending Tonga on its longstanding attention to the education of children with special needs, Slovenia asked whether Tonga would consider introducing mandated provisions for services for persons with disabilities that currently do not exist and recommended that Tonga pay increased attention to persons with disabilities and their related needs. It also recommended that Tonga systematically and continuously integrate a gender perspective in the follow-up process to the review.

47. Morocco noted Tonga's dedication to human rights, inter alia, the high school enrolment rates and that woman occupy important functions. It also noted Tonga's need for support and assistance to strengthen its capacity. It noted the initiatives taken by Tonga, including to accede to CEDAW and to promote education and training in human rights, and recommended that Tonga continue to step up its efforts in the promotion and protection of human rights *with the full support of the international community, as requested in the report submitted by Tonga to the UPR*. Morocco commended Tonga on its commitment to multilateralism through its participation in the peacekeeping forces of the United Nations and in the presidency of the Pacific Forum.

48. Australia commended Tonga on its constructive engagement with the UPR process noting that as a first Pacific Island country to appear before the UPR, it is a model of constructive participation, and on its efforts fully promotes and protects human rights. It welcomed Tonga's commitment to constitutional and political reform and noted the progress made towards achieving the Millennium Development Goals, raising the standards of the Tonga Police Force and preventing violence against women. It welcomed Tonga's interest in regional mechanisms to assist it and other Pacific Island countries to ratify and comply with human rights instruments. It would welcome Tonga becoming a party to ICCPR and ICESCR; signing the Optional Protocol to CRC on the sale of children, child prostitution and child pornography, and ratifying CEDAW. It also highlighted the

need and importance of providing technical assistance to support the constructive engagement of Pacific Island countries in the UPR process.

49. The Philippines commended Tonga on its gains in the promotion of human rights, especially of economic, social and cultural rights, such as education and health, despite the challenges it faces as a small Pacific Island State. It appreciated the high social standing of women in Tonga but encouraged it to further review the inheritance laws. It enquired about the situation of “disparented” children and recommended that Tonga share its experiences of the UPR with other Pacific Island States.

50. The Republic of Korea noted Tonga’s level of democratic development and the constitutional and political reforms voted to be implemented in 2010. It recommended that Tonga develop practical steps to enhance freedom of speech and freedom of the press. It also recommended that Tonga take all possible anti-corruption measures.

51. Israel, while commending the Tongan Government on its awareness of gender equality and recognizing that there is a ministerial portfolio to that effect, remains concerned about the discriminatory nature of inheritance laws as applied to women, especially regarding land ownership. While acknowledging that the Government has proposed amendments to the current land laws, it noted that further efforts should be made in redrafting the laws to enshrine complete equality of men and women. It recommended that Tonga consider signing and ratifying CEDAW and consider especially article 15 and 16 thereof which relate to the equal right of women to administer property and the equal rights of both spouses in respect of the ownership, acquisition, management, enjoyment and disposition of property. It noted with appreciation the information given that Tonga is currently considering acceding to CEDAW and other human rights instruments.

52. Egypt noted that Tonga’s achievements in human development were most impressive and recent elections were a testimony of its commitment to democratic reform. It noted that the realization of economic, social and cultural rights occupied an important place in Tonga, citing policies of free health care for life and free education up to the age of 14. It hoped this dedication would be reflected in its ratification of ICCPR and other human rights treaties. It recognized the financial, technical and capacity-building constraints in reporting to treaty bodies and recommended that Tonga officially seek to renew its request for assistance to the OHCHR in this respect and also through the UPR Trust Fund established specifically to assist in the implementation of recommendations emanating from the UPR. It asked whether Tonga believed there were significant barriers to reconciling universally agreed human rights norms with its cultural and civilizational wealth and particularities. It also stressed that no country is requested to observe highly controversial and divisive concepts falling outside the universally agreed human rights norms, as this would contradict the basis of the UPR.

53. The Syrian Arab Republic highlighted Tonga’s serious attitude towards human rights, citing a UNDP report from 2006 on the importance given to primary education for children aged 6 to 14 and the fact that 14 per cent of the budget is devoted to education. It also cited free health care in hospitals and dispensaries across the country and welcomed the overall level of development in the country, as evidenced by the increase in life expectancy for women and men, and a the reduction in child mortality rates. It sought more information on plans and programmes aimed at implementing the right to food and to health care and to equality between the sexes in the coming years.

54. Japan welcomed Tonga’s democratization process and commented on Tonga’s achievements in protecting economic, social and cultural rights in the field of health and education. It also noted that a joint urgent appeal had been sent by three special procedures on 8 December 2006, which included establishing a multi-agency taskforce to conduct an immediate review of

police lock-up and prison facilities in accordance with international standards, and enquired about the status of this urgent appeal. It recommended that Tonga continue to proceed with the work of reviewing and making necessary adjustments to relevant domestic laws and regulations to enable the prompt ratification of CEDAW, and also recommended that Tonga submit its initial report to the Committee on the Rights of the Child.

55. Senegal welcomed the open-mindedness with which Tonga's report was drafted and called on the international community to study ways and means to meet the capacity-building and technical assistance needs of the country in the field of human rights, as well on OHCHR to without delay consider establishing a framework for cooperation with Tonga. It also encouraged the Government to examine the possibility of acceding to the main international human rights instruments.

56. Tunisia noted that the Constitution expresses the aspirations of the people for freedom, independence and development and welcomed the significant progress made by Tonga, citing the UNDP report ranked it 55th in the human development index, with a life expectancy of 72.2 years and a record level of literacy of 98 per cent. It supported Tonga's request concerning capacity strengthening and technical assistance.

57. The United Kingdom of Great Britain and Northern Ireland indicated that it was impressed by the high level of consultations with civil society in the preparation for the UPR review. It welcomed the positive steps taken by Tonga over the years, demonstrating its commitment to human rights. It echoed the calls made in the reports provided as basis for the review of Tonga to take urgent steps to advance the legal position of women. It sought further information on how Tonga planned to address rules that discriminate against women and recommended that Tonga ratify CEDAW. It noted that Tonga has not yet responded to the urgent appeal sent by the Special Representative of the Secretary-General on the situation of human rights defenders in respect to the events of November 2006, and that some of the security forces involved in policing the troubles of 2006 ill-treated those arrested for participating in the riots. It urged the Government of Tonga to respond to the Special Representative of the Secretary-General about these issues and enquired about steps taken to restore faith in the police among citizens. It strongly encouraged Tonga to meet its reporting obligations under the CRC and ICERD, albeit recognizing the burden that reporting can place on small countries, and asked the delegation whether there is any further technical assistance Tonga would need to better meet its international commitments. It recommended that Tonga continue cooperating with civil society in the implementation of the outcome process.

58. Bangladesh noted that a UNDP report presented an encouraging picture of Tonga's education, free health care services and gender parity in accessing education, health care and employment opportunities, and provision of safe drinking water. It noted that women's right to land needed improvement and noted the request for technical assistance and financial support from Tonga to improve education services, redraft the Constitution and develop activities to promote human rights. It recommended to (a) Tonga to continue to request technical assistance and financial support to improve education services, to redraft the Kingdom's Constitution and its activities in the promotion of human rights. It indicated that the purpose of UPR was not to impose the values of one society on another and noted that if the traditional society of Tonga does not permit consensual sex between two men or two women, one should refrain from imposing this on them, as it is outside the purview of universally accepted human rights norms. As there is no treaty obliging Tonga to do otherwise, it (b) recommended that the Government continue to criminalize consensual same sex, which is outside the purview of universally accepted human rights norms, according to Tonga's national legislation.

59. Saudi Arabia expressed its hope that Tonga and other Pacific Islands will be represented in the near future in Geneva. It also noted the efforts of Tonga to promote and protect the rights of the child in all sectors and to provide education and basic health care in a comprehensive manner and free of charge.

60. With respect to questions on the full integration of persons with disabilities into Tongan society, the Permanent Representative of the Kingdom of Tonga to the United Nations noted that Tonga recently signed the Convention on the Rights of Persons with Disabilities, and that the incorporation of this Convention into domestic law may provide the basis to advance efforts to integrate persons with disabilities. On integrating a gender perspective into the UPR process, she observed that women led 47 NGOs involved in the consultation process for the report. Regarding the issue of posting a permanent representative for the Pacific Small Island Developing States in Geneva, she thanked for the expressions of support, and stated that this was an issue that required the consideration of the Pacific leaders. On the faith of citizens in the police force, she indicated that New Zealand and Australian police provided support for restoration of law and order during the riots in 2006, and were continuing to provide support for the development of a comprehensive programme of professional police training and the restoration of police integrity; furthermore there is a regional police programme under the governance pillar of the Pacific Plan. On its outstanding report on the CRC, she informed that the draft report was in the final stage of consideration by authorities before its submission to the Committee. She also noted, on the question of “disparented” children, that in Tonga there were extended family and social networks able to provide necessary support for children whose parents are not at home. With regard to the Government’s policy on the right to food, health and education, she referred to the Eighth Strategic Development Plan and the three yearly reviews of specific objectives, strategies and programmes for a sector-wide analysis.

61. The head of the delegation concluded the review by thanking all States who had taken the opportunity to contribute to the dialogue with Tonga. He indicated that the delegation listened thoughtfully to each of the contributions made and will continue to engage cooperatively and constructively with the troika as part of this innovative process. Whilst Tonga may seem to be a distant Kingdom of 100,000 people in the Pacific and youthful in terms of its membership of the United Nations, since 1875 the Kingdom has charted a visionary and ambitious course. That sense of vision and determination to chart a decidedly Tongan path continues as it seeks to find its own solutions to the challenges of the 21<sup>st</sup> century. However, that path, like its commitment to engage with the UPR process, can only truly be achieved with a lasting meaning and significance if it receives the proper support. He reiterated Tonga’s commitment to sharing its UPR experience with other States, especially those from the region, that are to follow.

62. At the 17th meeting, on 19 May 2008, during the adoption of the report, His Excellency, Mr. Sonatane Tu’akinamolahi Taumoepeau Tupou, Minister for Foreign Affairs, in his concluding remarks, , inter alia, informed the Working Group that Tonga would consider inviting special procedures on a case-by-case basis in the future.

## **II. CONCLUSIONS AND/OR RECOMMENDATIONS**

63. **The recommendations formulated during the interactive dialogue have been examined by Tonga and the recommendations listed below enjoy the support of Tonga:**

- 1. To continue the democratization process on which it has embarked so courageously (Holy See);**
- 2. To continue with determination and speed up the reform process it has begun (Switzerland);**

3. To favourably consider ratifying the core international human rights treaties within a reasonable period of time and participating more fully with international human rights mechanisms, especially special procedures of the Human Rights Council (Mexico);
4. To consider the implementation of recommendations by special procedures so that there are institutional safeguards against harsh treatment by police and security forces (Canada);
5. To ratify ICCPR and ICESCR (Brazil, Czech Republic, Italy, Switzerland, Turkey, Netherlands); CEDAW (Brazil, Czech Republic, New Zealand, Turkey, United Kingdom, Switzerland), the Optional Protocol to CEDAW (Brazil); the Optional Protocol to CRC on the sale of children, child prostitution and child pornography (Brazil); and CAT (Switzerland, Czech Republic, Canada, , Turkey);
6. To consider signing and ratifying CEDAW and consider especially article 15 and 16 thereof which relate to the equal right of women to administer property and the equal rights of both spouses in respect of the ownership, acquisition, management, enjoyment and disposition of property (Israel);
7. To continue to proceed with the work of reviewing and making necessary adjustments to relevant domestic laws and regulations for the prompt ratification of CEDAW (Japan);
8. To submit regularly its reports to the treaty bodies of the conventions it is party to, like the Committee on the Rights of the Child and the Committee on the Elimination of Racial Discrimination (Czech Republic);
9. To enact laws to protect women in employment free from any form of discrimination (Algeria);
10. To continue to promote its ambitious goals in education and improve the ratio of women in leading positions in the country (Algeria);
11. To pursue its efforts in order to curb the violence against women (Turkey);
12. To systematically and continuously integrate a gender perspective in the follow-up process to the review (Slovenia);
13. To advise potential donor agencies of the type of technical assistance that would help to meet its treaty body reporting obligations (New-Zealand);
14. To strengthen its efforts in the area of human rights education, training of public officials and on the participation of civil society in the promotion and protection of human rights, including through international and regional cooperation (Mexico);
15. To share its experiences of the UPR with other Pacific Island States (Philippines);



16. To officially seek to renew its request for assistance to the OHCHR in this respect and also through the UPR Trust Fund established specifically to assist in the implementation of recommendations emanating from the UPR (Egypt);
17. To submit its initial report on CRC (Japan);
18. To Tonga and to relevant actors to attentively follow-up on the requests for capacity-building and technical assistance on human rights (Mexico);
19. To continue to step up its efforts in the promotion and protection of human rights with the full support of the international community, as requested in the report submitted by Tonga to the UPR (Morocco);
20. To continue to request technical assistance and financial support to improve education services, to redraft the Kingdom's Constitution, and its activities in the promotion of human rights (Bangladesh);
21. To adopt measures to strengthen the protection of freedom of expression, information and the press (France, Canada);
22. To develop the practical steps to enhance freedom of speech and freedom of the press (Republic of Korea);
23. To pursue its efforts to create a national human rights institution under the Pacific Plan (Canada);
24. To establish a national human rights institution in accordance with the Paris Principles (France);
25. To create, if not a national human rights institution, at least one at the level of the group of Islands it belongs to, so that they may more effectively improve their human rights performance and implement their human rights obligations (Algeria);
26. To continue to uphold the core values that are in the Tongan constitutional and customary history, in its work to ensure full compliance with human rights and fundamental freedoms for all Tongans (Algeria);
27. To continue its endeavours towards better serving its people by securing a higher standard of human rights (Turkey);
28. To pay increased attention to persons with disabilities and their related needs (Slovenia);
29. To take all the possible anti-corruption measures (Republic of Korea);
30. To continues cooperating with civil society in the implementation of the outcome process (United Kingdom);
31. To promote the human rights education programmes for police, security and penal personnel (Canada).

64. The recommendations noted in the report in paragraphs 26 (b); 26 (c); 27; 28 (b) and 28 (c); 31 (b) and (f); 38 (c); 39 (a) and (b); and 58 (b) above did not enjoy the support of Tonga.

65. With regard to recommendations 28 (b); 31 (b); 39 (b); and 58 (b), the State under review offers the following comments:

Whilst current laws might criminalize certain consensual sexual conduct, Tonga is a Christian society that believes in tolerance and respect across difference. A respect for difference allows the widest margin of appreciation to lawmakers as well as other stakeholders and encourages robust debate about equality within society.

66. With regard to recommendation 26 (c), the State under review offers the following comments:

The death penalty remains the ultimate criminal sanction lawfully available to the State and has only been imposed in the most heinous of cases some 26 years ago. The current determination for constitutional and political reform and the consideration of other international human rights instruments may offer further opportunities for discussion and debate on this issue.

67. All conclusions and/or recommendations contained in the present report reflect the position of the submitting State(s) and /or the State under review thereon. They should not be construed as endorsed by the Working Group as a whole.

**Annex**

**Composition of the delegation**

The delegation of Tonga was headed by His Excellency, Mr. Sonatane Tu'akinamolahi Taumoepeau Tupou, Minister of Foreign Affairs, Acting Minister of Defence and Acting Governor of Vava'u, and composed of five members:

H.E. Ms. Fekitamoelea 'Utoikamanu, Permanent Representative to the United Nations in New York;

H.E. Dr. Ngongo Kioa, High Commissioner to the United Kingdom;

Mr. Viliami Malolo, Deputy Secretary for Foreign Affairs;

Ms. 'Ainise Odette Tupouhomohema, Assistant Secretary, Ministry for Foreign Affairs;

Mr. Gerad Winter, Advisor.

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