



General Assembly

Distr.
LIMITED

A/HRC/WG.6/3/L.16
18 December 2008

Original: ENGLISH

HUMAN RIGHTS COUNCIL
Working Group on the Universal Periodic Review
Third session
Geneva, 1-15 December 2008

DRAFT REPORT OF THE WORKING GROUP ON THE UNIVERSAL PERIODIC REVIEW *

Tuvalu

* The final document will be issued under the symbol A/HRC/10/84. The annex to the present report is circulated as received.

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Introduction

1. The Working Group on the Universal Periodic Review, established in accordance with Human Rights Council resolution 5/1 of 18 June 2007, held its third session from 1 to 15 December 2008. The review of Tuvalu was held at the 16th meeting, on 11 December 2008. The delegation of Tuvalu was headed by H.E. Mr. Enele Sopoaga, Permanent Secretary, Department of Foreign Affairs and Labour. At its 17th meeting, on 15 December 2008, the Working Group adopted the present report.
2. On 8 September 2008, the Human Rights Council selected the following group of rapporteurs (troika) to facilitate the review of Tuvalu: Azerbaijan, Qatar and Zambia.
3. In accordance with paragraph 15 of the annex to resolution 5/1, the following documents were issued for the review of Tuvalu:
 - (a) A national report submitted made in accordance with paragraph 15 (a) (A/HRC/WG.6/3/TUV/1);
 - (b) A compilation prepared by the Office of the United Nations High Commissioner for Human Rights (OHCHR), in accordance with paragraph 15 (b) (A/HRC/WG.6/3/TUV/2);
 - (c) A summary prepared by OHCHR, in accordance with paragraph 15 (c) (A/HRC/WG.6/3/TUV/3).
4. A list of questions prepared in advance by the Czech Republic, Denmark, Germany, Latvia, the Netherlands, Sweden and the United Kingdom of Great Britain and Northern Ireland was transmitted to Tuvalu through the troika. These questions are available on the extranet of the universal periodic review.

I. SUMMARY OF THE PROCEEDINGS OF THE REVIEW PROCESS

A. Presentation by the State under review

5. At the 16th meeting, on 11 December 2008, H.E. Mr. Enele Sopoaga, Permanent Secretary, Department of Foreign Affairs and Labour, presented the national report and made an opening statement. He affirmed the State's commitment to the universal periodic review and expressed appreciation to those who had provided support in the preparations.
6. The Head of Delegation referred to the small island characteristics of Tuvalu and its unique vulnerability to challenges, particularly those posed by climate change and sea-level rise. The impact of globalization, as recently demonstrated by the hikes in fuel and food prices, was overwhelming, and Tuvalu expressed gratitude to its partners for their support, particularly its Pacific neighbouring partners. The continuing loss of vital land, destruction of food crops and contamination of the ground water supply by seawater intrusion are everyday challenges to the realization of the economic, social and cultural rights of its citizens.
7. Tuvalu expressed its commitment to human rights and noted that many commitments are dependent on the availability of financial and technical resources. Its responsibilities to human rights are required by the Constitution, the Bill of Rights, the national sustainable development strategy and the national plan on the implementation of the Millennium Development Goals. Tuvalu is also committed to Pacific regional arrangements, particularly to the Pacific Plan, and

to working with the Pacific Islands Forum and the Secretariat of the Pacific Community to promote human rights nationally and regionally.

8. Responding to questions sent in advance, Tuvalu stated that civil society was closely involved in consultations and considerations of the national report and expressed a commitment to initiating partnerships with stakeholders to build local capacities.

9. Among measures of the institutional framework, the Head of Delegation reported on the establishment of the people's lawyer office, training of young lawyers and expansion of the Attorney-General's office. Tuvalu supported the concept of establishing a national human rights mechanism, but this would have to be considered in the light of the availability of financial and technical resources to not only establish it but also to sustain the institution in the long run. As a practical solution, the Government considered pooling resources for a regional facility, and called on OHCHR to support this regional initiative. With regard to human rights training, community paralegals conduct grass-roots training on human rights and gender, and judges, magistrates and members of Parliament have received regional training. Tuvalu supported the availability of legal services through the people's lawyer office and training of lawyers to improve access to justice.

10. With regard to corruption and good governance, the Government expressed its full support for the work of the Auditor-General's office, but pointed out that all sectors of the State are underfunded.

11. Tuvalu reported that the State report had been submitted to the Committee on the Elimination of Discrimination against Women and that the report for the Committee on the Rights of the Child was in its final stages. Recommendations by both Committees have already been or are being implemented, inter alia, through the educational master plan of action and the women policy.

12. Tuvalu was well aware of the need to keep domestic laws and cultural practices consistent with international conventions, and strived to ensure that there are adequate resources to enable the Government to implement and harmonize laws.

13. The Head of Delegation stated that the Constitution does not currently mention that discrimination on the basis of gender is prohibited. Referring to culture and land issues, Tuvalu is considering amending the Constitution by including sex-gender discrimination and introducing a clause protecting customary land inheritance laws.

14. While stating that Tuvalu respects the rights of persons of all sexual orientations, the Head of Delegation stated that the question of legal protection in the Constitution will need to be carefully considered, and that Tuvalu is open to discussion and relevant actions.

15. The Government is currently collecting data on domestic violence against women. In 2007, the Tuvalu High Court made a decision on what was perhaps the first sexual harassment case in the Pacific. The Court recognized the common law tort of sexual harassment and ruled in favour of the female employee.

16. In Tuvalu, education is free and compulsory for primary school up to year 8, and there are provisions for free health care and language rights.

17. Tuvalu believed that the 1951 Convention relating to the Status of Refugees was not relevant to the country. The Government stands ready, if necessary, to act appropriately within its limited capacities.

18. While stressing that Tuvalu has no objection to the substance of the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights, the Government did not have the resources required to report on or implement these and many other international conventions. If provided with resources, the ratification would be a matter of course. On the question of the ratification of the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, the Government was not aware of any cases of torture in Tuvalu.

19. Tuvalu would certainly consider extending invitations to special procedures mandate-holders provided that it does not create extra financial burden on the State.

20. Acutely aware of the impact of climate change on human rights, Tuvalu reported on its participation and active engagement in various forums, including the United Nations Framework Convention on Climate Change and the Kyoto Protocol. In 2007, Tuvalu produced a national blueprint on climate change and will continue to pursue all avenues to ensure that the effects of climate change do not affect the rights of Tuvaluans to their existence and remain on their islands.

B. Interactive dialogue and responses by the State under review

21. During the interactive dialogue, statements were made by 23 delegations. A number of delegations thanked the Government for the comprehensive and transparent national report, and its clear presentation and responses to advance questions on the human rights situation in Tuvalu. Statements were made welcoming Tuvalu's commitment to the universal periodic review process, its constructive participation and the noteworthy and extensive consultations with stakeholders in the preparation of the national report. A number of delegations praised the State's efforts to improve its human rights situation and also appreciated its development challenges as a small island State and its vulnerability to climate change.

22. Switzerland welcomed the State's very good performance in covering the basic needs of the population with virtually universal access to basic health care and education. It observed that women's rights are not sufficiently protected and promoted in national legislation, particularly when it comes to marriage, divorce, custody of children and inheritance. Switzerland recommended that Tuvalu eliminate any legislation that discriminates against women, implement the relevant recommendations of the Committee on the Elimination of Discrimination against Women and introduce a gender-specific dimension in the anti-discrimination provision of the Constitution. It also noted that Tuvalu has only ratified two international human rights treaties. Switzerland recommended that Tuvalu ratify, in particular, the International Covenant on Economic, Social and Cultural Rights, the International Covenant on Civil and Political Rights and the Convention against Torture. While non-ratification is primarily due to the technical difficulties involved in reporting to treaty bodies, Switzerland stated that it stands ready to provide technical assistance in the preparation of such reports. Switzerland welcomed additional information on the constitutional Charter of Rights in Tuvalu, which allows for limitations and restrictions when certain practices threaten the State's values. More detailed information was requested on the types of practices involved and what restrictions would apply. It commended Tuvalu on its efforts to mitigate the effects of climate change on the enjoyment of human rights,

and recommended that it step up efforts to raise the awareness of the population of the impact of climate change and involve the population more in decision-making processes for mitigating and adapting to the consequences of such changes.

23. The Philippines referred to the provision of free universal access to medical services and primary education as progressive measures. It noted that Tuvalu had indicated its interest in establishing an independent national human rights institution, and stated that the Philippines would welcome engaging in a cooperative dialogue on the matter. It recalled that the possibility of providing technical assistance could also be explored, and that the universal periodic review is a means by which countries can identify areas of common interest and establish capacity-building partnerships. The Philippines greatly appreciated the State's principled stance to raise awareness of the need to combat climate change, which threatens all aspects of life, especially in island nations. The Philippines recommended that Tuvalu continue to play an active role in promoting international cooperation to combat climate change. It appreciated that the national report indicated that more needed to be done to improve women's rights in domestic law and to counter discrimination based on belief. The Philippines recommended that Tuvalu continue to strengthen measures to promote the equal rights of women and to counter discrimination. It expressed its awareness that ratification of international human rights treaties could be a heavy burden on small countries with limited institutional and resource capacities. Nevertheless, the Philippines encouraged Tuvalu to consider possible ratification of the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights.

24. Turkey stated that the three basic documents of the review demonstrated that the overall performance of Tuvalu in the field of human rights is positive. It understood that capacity-building and technical assistance are fundamental requirements for further progress. It noted that legislative reform on the punishment of sexual abuse of children, land and family laws appear to be the main priorities, and believed that the State's intention to establish a national human rights commission and a human rights office is remarkable. Turkey recommended that Tuvalu continue its cooperation with OHCHR, with a view to making necessary improvements in these fields. It praised Tuvalu, especially with regard to access to basic health services and formal education. Turkey encouraged the Government to continue to work with civil society, as well as OHCHR, particularly towards the elimination of gender-based discrimination and other appropriate areas.

25. The Netherlands noted that, although Tuvalu attaches importance to transparency, the laws against corruption are rather weak and the Auditor's Office, which oversees Government expenditure, is underfunded. It asked whether Tuvalu envisaged actions to improve transparency and if the Government was willing to establish contacts with Transparency International. In noting that violence against women is often overlooked because of the absence of data, the Netherlands was pleased to learn that Tuvalu is collecting data about domestic violence against women and asked whether the Government was willing to act upon the outcome of those data. It noted with appreciation that the law in Tuvalu explicitly prohibits discrimination on the basis of race, colour or place of origin. While noting that discrimination on the basis of gender is not prohibited, it considered that the position of women is improving. The Netherlands recommended that Tuvalu adopt a law that prohibits discrimination on the basis of gender. While commending Tuvalu for a law that provides for granting asylum, the Netherlands noted that lawfully justified asylum-seekers face difficulties with the implementation of this law and recommended that the Government improve the implementation of its law in this respect.

26. Slovenia noted that, according to the United Nations Development Assistance Framework report, Tuvalu generally respects the human rights of its citizens and that society is largely egalitarian, while some forms of discrimination exist, particularly with regard to women. While welcoming the State's cooperation with the Committee on the Elimination of Discrimination against Women, Slovenia was concerned that, owing to traditional values, the Constitution does not recognize freedom from discrimination on the grounds of gender. It noted that women are consequently lawfully subject to various forms of discrimination, namely a subordinate role and limited job opportunities. Slovenia was particularly concerned about the discrimination that women face in laws relating to land inheritance. Slovenia asked about measures taken to review all relevant laws that discriminate or have a negative impact on women and to bring them into line with the standards of the Convention on the Elimination of All Forms of Discrimination against Women. Slovenia noted that Tuvalu had only ratified the latter Convention and the Convention on the Rights of the Child of the international human rights treaties. Slovenia recommended that Tuvalu consider ratifying other key treaties, particularly the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights.

27. Italy stated that the review process is a useful opportunity for Tuvalu to directly experience the functioning of the international human rights system. It noted from the compilation report prepared by OHCHR that, in some parts of the territory, there are limitations to freedom of religion and worship. Italy was interested in learning what measures the Government intends to take to ensure that all religious groups receive equitable treatment, in particular with regard to access to State-owned information media, which play a fundamental role in reaching people living on the outer islands. Italy recommended the accession of Tuvalu to the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights. Italy also recommended that Tuvalu incorporate fully into its legislation the provisions of the Convention on the Rights of the Child to enhance the protection of children's rights in the country.

28. New Zealand noted that Tuvalu generally respects the human rights of Tuvaluans, particularly under the 1986 Constitution. It noted the absence of an independent human rights body responsible for promoting and protecting human rights, including raising awareness of human rights, and asked whether Tuvalu planned to address this institutional gap. New Zealand recommended that Tuvalu consider appointing an Ombudsman with responsibility for investigating alleged violations of human rights as a short-term measure. It noted that this model had been employed successfully by other small Pacific countries with capacity constraints. New Zealand remained concerned about the subordinate position of women in society, and noted that the 1986 Constitution does not specifically prohibit discrimination against women. New Zealand strongly recommended that Tuvalu amend the Constitution to include freedom from discrimination on the grounds of sex. New Zealand also recommended that Tuvalu develop a comprehensive strategy to reduce domestic violence, including raising public awareness of the issue and identifying ways to combat such violence. It also noted that Tuvaluan law does not prohibit discrimination on the basis of physical, mental, intellectual or sensory impairment. New Zealand recommended that Tuvalu amend the Constitution to prohibit discrimination against persons with disabilities.

29. Mexico appreciated the commitment of Tuvalu to achieving the Millennium Development Goals, many of which had already been met. It observed from the national report that the legal framework incorporates customary law but excludes those precepts which may be perceived as violations of human rights. Mexico also appreciated that, in domestic legislation,

should a law be open to more than one interpretation, preference will always be given to the interpretation compatible with its international obligations, in particular in the field of human rights. Mexico recommended that these features be singled out in the report on the State review as good practices in the field of human rights. It noted that some of the major challenges facing Tuvalu concern, inter alia, non-discrimination, children's rights, freedom of religion, cases of statelessness, corporal punishment and inheritance. It noted that Tuvalu has only ratified two human rights instruments, and recommended that consideration be given as a matter of priority to the ratification of at least the two international covenants on civil and political, and economic, social and cultural rights, respectively. Mexico recommended that a standing invitation be extended to human rights special procedures, and that it incorporate in its legislation, at all levels, including in the Constitution, provisions banning discrimination on grounds of sex and gender. Furthermore, Mexico recommended that Tuvalu reform the Penal Code to cover offences as sexual abuse against minors and eliminate corporal punishment. It also expressed the wish that Tuvalu ensure that the necessary resources are made available to the Ombudsman, established under the Paris Principles in 2006, as soon as possible, so that it can begin functioning.

30. Japan applauded Tuvalu for its efforts to protect the rights to education and access to health care, ratification of the Convention on the Rights of the Child and the Convention on the Elimination of All Forms of Discrimination against Women, and many international human rights commitments, including the Beijing Platform of Action. Japan noted that Tuvalu had not yet ratified several major human rights treaties, including the International Covenant on Civil and Political Rights, the International Covenant on Economic, Social and Cultural Rights, the Convention against Torture and the International Convention on the Elimination of All Forms of Racial Discrimination. Japan hoped that Tuvalu would ratify these treaties expeditiously and recommended that it make good use of technical assistance from OHCHR to do so. It welcomed the State's submission of its initial report to the Committee on the Elimination of Discrimination against Women and its efforts to guarantee the provisions of the governing Convention with corresponding domestic legislation. Japan asked for more information about measures in place to improve the human rights situation of women and eliminate existing discrimination. Regarding human rights education, especially on educational activities to promote freedom of religion and expression on the outer islands and capacity-building for police officers, Japan asked about measures taken as well as what efforts were planned for the future.

31. The Czech Republic thanked the State for its responses to advance questions, especially concerning the institutional framework and awareness-raising programmes. On this occasion, it recommended that Tuvalu (a) issue and implement a standing invitation to all special procedures. With regard to the protection of the right to privacy and non-discrimination, it recommended (b) the decriminalization of consensual same-sex activity between adults and the adoption of measures to promote tolerance in this regard, which would also facilitate more effective educational programmes for the prevention of HIV/AIDS. The Czech Republic recommended that Tuvalu (c) effectively strengthen its human rights institutional framework and further promote concrete programmes to raise awareness on human rights.

32. Germany recognized the efforts and accomplishments made regarding the promotion of human rights in Tuvalu. It referred to the State's national report and the initial statement that women's rights are not adequately protected by domestic law. Germany referred to the mention that discrimination on the grounds of gender is not prohibited by law but that the Government is considering amending the Constitution. Germany recommended that Tuvalu stay firmly committed to the issue and further discussion leading to an amendment of the Constitution to prohibit discrimination based on sex and gender. Germany asked about people on the outer

islands and a trust fund set up to strengthen their situation. It asked for Tuvalu to elaborate on the measures taken in this regard, especially to ensure improved access for people living in those regions to the administration and judicial system.

33. Australia recognized the challenges that Tuvalu faces, including in terms of having the necessary resources to implement national human rights programmes, and considered it particularly commendable the manner in which Tuvalu adheres to the Charter of the United Nations and the Universal Declaration of Human Rights. Australia noted that the Tuvalu National Council of Women is increasingly concerned by the slow progress made by the Government towards ratification of human rights treaties and their supporting Optional Protocols. In this regard, Australia recommended in particular that Tuvalu sign the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights. It welcomed advice from the delegation regarding the grass-roots training on human rights and gender being carried out by the Tuvalu legal rights training officer. It noted reports, however, that some laws indirectly allow for lawful discrimination on the grounds of sex or gender. Australia recommended that Tuvalu implement effective means to ensure greater public awareness of the issues of domestic violence and gender discrimination and encourage greater involvement of Government agencies and civil society in efforts to address these issues.

34. Responding to issues raised, Tuvalu thanked delegations for their words of understanding and appreciated the questions and recommendations. Regarding the issue of discrimination against women, the Head of Delegation stated that the Government committed itself to collaborating with the stakeholders with a view to make appropriate amendments to the Constitution and noted that work is in progress.

35. The Attorney-General of Tuvalu provided further clarification related to the treatment of women and possible discrimination under the law. She noted that issues were raised as regards women's rights and their marginalization and discrimination in relation to adoption, marriage, custody and land issues. She stated that the laws stem from the Constitution, which has no provision for the prohibition of discrimination on the basis of sex, and stressed that these laws were currently under review.

36. The Head of Delegation reiterated the State's full commitment to ratifying the main human rights treaties and stated that it would do so and implement them once resources are available.

37. With reference to the right to information and the provision of services to people on the outer islands and the role of the Tuvalu Trust Fund in that regard, the Head of Delegation affirmed that the Government needs to serve the interests of those living on the outer islands. The Fund was established with the cooperation of the United Kingdom, New Zealand, Australia, Japan and the Republic of Korea and, to some extent, Tuvalu itself. The Fund was providing the much needed budgetary support to ensure the continuation of vital services for the people on the outer islands. He explained that a branch of the Fund was set up to serve the immediate needs of the outer islands and that funds were managed prudently and properly.

38. Concerning discrimination on the basis of religion, the Head of Delegation confirmed that Tuvalu fully accepted and recognized the rights of different denominations to worship and practice their religions. He noted the need to harmonize religions with traditional practices to sustain and maintain order in the islands, and that the Government recognized the need to ensure

the rights of people to worship are well protected and is fully committed to addressing where there have been omissions.

39. In relation to concerns raised about discrimination on the basis of sex and land ownership, Tuvalu emphasized that further consultations between the Government and all stakeholders were absolutely necessary to ensure peace and order before these issues could be legally provided for in the laws of Tuvalu.

40. Tuvalu reaffirmed its awareness of the practicality of an office of the Ombudsman as a possible initial step to addressing human rights issues in Tuvalu, and that the Government was considering such a proposal within the constraints of resources available.

41. The Head of Delegation confirmed that the issue of corporal punishment was being addressed as part of efforts of the Government to harmonize domestic laws and practices with the requirements of international human rights standards. He noted that, at the same time, the population of Tuvalu is influenced by traditional practices, some of which allow for the use of corporal punishment at home as a disciplinary measure. He considered that Tuvalu society has allowed the use of corporal punishment by parents at home and has, to some extent, permitted its use at primary school as well. The Government was working hard to promote awareness and understanding of parents, society and the community of the human rights implications of corporal punishment and was committed to the need to consult further on how these can be addressed practically in legal arrangements.

42. Algeria noted that the national report emphasized the difficulties in implementing priorities, particularly as a result of the effects of climate change, and that the lack of resources affected the State's ability to meet the Millennium Development Goals. Algeria considered it important that the international community should heed the request for technical and financial assistance submitted in the national report. Algeria welcomed the State's efforts in literacy, with a rate of 95 per cent, but noted that the United Nations Development Assistance Framework report for 2003-2007 indicated there had been some regression in terms of education. Algeria recommended that Tuvalu accord appropriate attention to this sector in the medium and long term as the only way to correct the lack of human resources and institutional capacities in the country. It also noted that Tuvalu has acceded to the Convention on the Elimination of All Forms of Discrimination against Women and the Convention on the Rights of the Child only and asked what obstacles have prevented it from acceding to other international instruments. Algeria recommended that Tuvalu consider the possibility of acceding promptly to at least the main international instruments, such as the International Covenant on Civil and Political Rights, the International Covenant on Economic, Social and Cultural Rights and the International Convention on the Elimination of All Forms of Racial Discrimination. It also noted that the establishment of a mission in Geneva for all Pacific island countries could be useful.

43. The United Kingdom recognized the capacity constraints that Tuvalu faced and applauded the efforts made despite them. It recommended that Tuvalu continue to work with civil society in the follow-up to the review, and welcomed the answers to the advance questions, including on the impact of climate change on the human rights of the citizens of Tuvalu. Mindful of the constraints faced, the United Kingdom would welcome further efforts by the Government to implement rights and obligations under the Convention on the Elimination of All Forms of Discrimination against Women and the Convention on the Rights of the Child. It expressed concern that Tuvalu had yet to report as required to the Committee on the Rights of the Child. It also strongly encouraged Tuvalu to meet its reporting obligations and would be keen to

investigate ways that the United Kingdom could support the work of UNICEF and Tuvalu to fully implement the Convention on the Rights of the Child. The United Kingdom noted the qualifications concerning customary law and limitations under the Bill of Rights aimed at limiting practice which are “divisive, unsettling or offensive to the people”, or directly threaten “Tuvaluan values and culture”. While the limitations are further clarified by the Constitution, actions must be “reasonable and justifiable within a democratic society”; there are still forms of discrimination against women in family law and restrictions on freedom of religion, belief and expression in Tuvalu. It welcomed the explanation of the work under way to review the law in this area and encouraged Tuvalu in its efforts to correct this. The United Kingdom recommended that Tuvalu prioritize reforms to modernize legislation and eliminate all forms of discrimination.

44. France congratulated Tuvalu on the human rights situation, which it considered basically satisfactory. It expressed concern at the number of cases of discrimination against women, particularly based on certain traditions. It noted that domestic violence is often neglected, particularly owing to the lack of evidence, and asked how information on domestic violence is collected. France recommended that Tuvalu establish equality between the sexes in the Constitution and take all necessary measures to counter gender-based discrimination. It noted that, even if rape is criminalized, domestic violence is not included in the definition. France recommended that Tuvalu penalize rape, whoever is responsible, including marital rape. In noting that Tuvalu is not State party to the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights, and while aware of the material difficulties faced, France recommended that the Government sign and ratify these two major instruments as soon as possible. It noted the lack of a specific mechanism for the promotion and protection of human rights because of a lack of financial and technical resources, and hoped that Tuvalu would give priority consideration to these problems. France recommended that Tuvalu establish a national human rights institution in accordance with the Paris Principles.

45. Zambia expressed its support and encouragement while noting that Tuvalu has a long way to go before it meets some of its national and international obligations in the area of human rights. It noted that Tuvalu is not a party to the two major treaties, the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights. The two treaties that have been ratified, the Convention on the Elimination of All Forms of Discrimination against Women and the Convention on the Rights of the Child, had not yet been domesticated into national law. It noted with interest and as remarkable achievements the life expectancy at birth of 67 years, the adult literacy rate of 95 per cent and that there are free health services and compulsory free education for children from 7 to 14 years. Zambia recommended that the State call on the international community to offer very much needed technical assistance to Tuvalu as stipulated and outlined in paragraph 77 of the national report and that the international community address the call by Tuvalu for technical assistance in the establishment of a human rights institution.

46. Latvia referred to the United Nations Development Assistance Framework report for 2003-2007, which noted that Tuvalu had an excellent record of meeting its people’s basic needs since its independence in 1978, with nearly universal access to basic health services and formal education. It appreciated in particular the response given regarding the issue of standing invitations to the special procedures. Latvia believed that accommodation of special procedures mandate-holders does not place a significant burden on a country, even a small one, as exemplified by a number of small States that have issued standing invitations. Latvia believed that the special procedures mandate-holders are sensitive to the resource constraints of smaller

States in the preparations of their visits. While no requests have been made by special procedures mandate-holders to visit Tuvalu, Latvia recommended that Tuvalu consider extending a standing invitation to all special procedures of the Council.

47. Maldives underlined, as noted in the national report, that the greatest threats facing Tuvalu, its people and their human rights are climate change and sea-level rise. Global warming immediately and directly undermines a wide range of fundamental rights in Tuvalu, including the rights to food, water, adequate housing, development, health and even life. It congratulated Tuvalu on its tireless efforts to protect the rights of its people by campaigning against human-induced climate change. Maldives recognized that Tuvalu on its own is incapable of fully protecting the wide range of rights and freedoms directly implicated by climate change, which ultimately originates far beyond its borders. It thus considered that the international community, in particular the major emitting countries of the developed world, must also take responsibility by stopping their dangerous interference with the global climate system. Maldives recommended that Tuvalu continue to engage with the international community, particularly the major emitting countries of the developed world, many of whom are States members of the Council, and work with those countries in order to promote the human rights of Tuvaluans by securing significant global reductions in greenhouse gas emissions. It also recommended that Tuvalu participate in discussions in the Council, scheduled in March 2009, on the relationship between human rights and climate change, in order to send a strong message to the parties to the United Nations Framework Convention on Climate Change on the importance of reaching an effective and workable global agreement on climate change mitigation and adaptation.

48. Brazil welcomed the important concrete steps taken in relation to the State's accession to the Convention on the Elimination of All Forms of Discrimination against Women and the submission of its first report in June 2008. Brazil specifically noted the State's recognition of the importance of setting up, as early as possible, a national commission for human rights and a human rights office in the country, and called on the international community to consider technical assistance and financial support in building such institutions as well as in providing human rights education programmes and awareness-raising activities. In the spirit of the upcoming Review Conference on racism, racial discrimination, xenophobia and related intolerance, Brazil recommended that the Government keep working with OHCHR on this theme as they enter the final phase of the preparatory process for the Conference. Brazil recommended that the Government work towards accomplishing the human rights goals set by the Council in its resolution 9/12 and also towards strengthening its public policy to guarantee the rights of the child, with special attention to children without parental care. In recognizing the efforts made by Tuvalu, Brazil recommended the ratification of human rights treaties to which Tuvalu is not yet a party. Regarding access to justice, Brazil noted that since the only High Court is physically located in the capital, it is expensive for parties and witnesses residing in other islands to attend the hearing of their cases. It asked what measures are taken to make the High Court more accessible to the people of Tuvalu.

49. Cuba expressed its thanks for the presentation of the results achieved and took note of the problems and challenges remaining, which had been honestly acknowledged by the Government, as had the decisiveness and readiness to overcome them. It underscored the free access to medical health care provided by the Government and efforts and resources allocated to provide adequate care for serious cases where the necessary treatment is not available in the country, with patients sent to Fiji or New Zealand at the expense of the Government. It acknowledged the achievements in the field of education, particularly the improvement of curricula, and noted measures taken in supporting young people and the advancement of women. Cuba recommended

that Tuvalu continue its actions in promoting and protecting human rights effectively on the ground and achieving the goals set up in the national strategy for sustainable development.

50. Canada recognized that Tuvalu faced many development challenges and capacity constraints, and noted that the national report showed laudable transparency in recognizing the issues faced in the field of human rights. Canada stated that a recent United Nations Development Assistance Framework report highlighted the State's recent focus on the devolution of authority to traditional local government bodies, in an effort to further the development of the outer islands. The report also indicated that, on the outer islands, in particular, traditional and customary practices sometimes result in discriminatory practices against women and religious discrimination. Canada was encouraged by the State's submission for the review, which recognized that, in the face of these challenges, there is a need to support individual freedoms of belief and expression. Tuvalu had also recognized in its report submitted to the Committee on the Elimination of Discrimination against Women that certain areas of its domestic law must be brought into compliance with the Convention on the Elimination of All Forms of Discrimination against Women, in particular in areas of land and family law, which Canada considered also a significant step. Canada recommended that Tuvalu (a) continue to combat discriminatory societal behaviours, including by working at reforming domestic laws, in particular land and family laws, which require amendments in order for Tuvalu to be in compliance with the Convention on the Elimination of Discrimination against Women. Canada noted that, to date, Tuvalu has failed to convene its Court of Appeal, although a notice to that regard was filed with the trial court in relation to a High Court ruling in 2005 on the banning of a religious group on an outer island. Recourse to appeal is rooted in the general principle of law establishing the right to invoke judicial action, and it is provided for in the 1986 Constitution. Canada also recommended that Tuvalu (b) convene the Court of Appeal in the interest of addressing the pending appeal to the High Court of 2005 ruling on the case of *Teonea v. Kaupule*; and (c) ratify core international human rights instruments, in particular the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights.

51. China expressed appreciation for the State's efforts and achievements in recent years in the field of human rights. It asked how climate change affects the human rights situation in Tuvalu, and the efforts made and difficulties encountered.

52. Morocco noted that the State's voluntary commitments demonstrate its dedication to ensuring fundamental rights and freedoms. It noted, however, that despite the manifested will and the tremendous efforts made, the promotion and protection of human rights and fundamental freedoms is still dependant on the availability of financial, human and technical resources. Despite these constraints, Tuvalu continued to focus on harmonizing its national legislation with international human rights instruments and to setting up institutional structures to ensure the full enjoyment of these rights as well as human, social and economic development. Morocco recommended that Tuvalu persevere along its path and ask the international community to provide all the technical and financial support needed by Tuvalu during this process, particularly for the setting up of national human rights institution in conformity with the Paris Principles; for the continuation of efforts to harmonize national legislation with international human rights instruments; for awareness-raising and the dissemination of human rights principles among the population at large; and for human rights training for officers responsible for law enforcement in Tuvalu.

53. In responding to issues raised, Tuvalu reiterated its appreciation for the recommendations and questions. The Head of Delegation was encouraged by the statements of support to achieve results on human rights and for possible financial assistance, particularly through calls to the international community to provide much needed support. He noted that there were administrative, political and legal implications to addressing the issues raised, and budgetary implications involved in establishing an institutional framework.

54. Referring to the concern expressed about educational standards, Tuvalu reiterated its full commitment to universal access to education, while it also explained that access to quality education is a challenge.

55. On the issue of acceding to treaties such as the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights, Tuvalu recalled its full commitment to the spirit and substance of these conventions and to accede to them, but only after consultations and taking into account the resource implications.

56. The Head of Delegation assured that the Government would work with civil society and all stakeholders to fulfil its human rights obligations.

57. While agreeing with the need to harmonize customary law with traditional practices and to provide for this in laws, Tuvalu pointed out that many of the laws dated from colonial times and needed review and updating. The Government would consult upon and amend such laws as necessary, including the modernizing of its legislation, and welcomed the offer of technical assistance and financial resources from the United Kingdom in this regard. The delegation also stated that domestic violence and penalties for rape were important issues, and that the Government was fully committed to addressing them.

58. Tuvalu acknowledged the difficulties arising from the lack of capacity and resources to provide all levels of medical care in Tuvalu to its people, as persons requiring operations often had to travel to Fiji and New Zealand for such care at the expense of the Government.

59. The Head of Delegation indicated that Tuvalu was operationalizing human rights, including through strategies on sustainable development, and that it supported international efforts through sponsoring and supporting resolutions on such matters.

60. Regarding the devolution of decision-making to the governance bodies on the outer islands, Tuvalu very strongly supported such an undertaking within the context of cultural and traditional practices in accordance with Polynesian culture. It referred to areas where a lack of understanding and awareness existed of the human rights implications of traditions and practices. The Government welcomed any collaboration from partners to help in correcting these issues and to improve the alignment of such practices with international standards.

61. The Head of Delegation noted that land ownership was an important issue in the Pacific, and land played a major role in life on the islands. It was a very sensitive issue; for example, no one, not even private companies, can buy the right of ownership of the land from the Tuvaluans.

62. Tuvalu expressed appreciation for questions on how climate change was affecting the people, who are very concerned about its impact. The Government is working in close cooperation with the international community and hoped that urgent measures would be taken to lower greenhouse emissions into the atmosphere and that technologies would be developed as a matter of urgency to address climate change also for adaptation. Tuvalu confirmed its interest

and willingness to participate in the Council's planned consideration of climate change and human rights in March 2009. The Head of Delegation stated that time was running out for the international community and there is a role for the universal periodic review process to advise the Council and the United Nations on the problem of climate change. He agreed with small island countries advocating for and encouraging proper dialogue, and added that Tuvalu is being constantly forced to take up the option of resettling its people on other countries. He stated that to relocate the people with all their cultural and fundamental human rights would be self-defeating for the international community, and believed that it would be unfortunate if the Council took the view that this was an option.

63. The Attorney-General of Tuvalu answered questions on access to justice and the High Court and the Court of Appeal, which is being looked into by the Government, including in the context of the ongoing process of reviewing the laws to improve them, a project which is supported by Australia and the United Kingdom. The High Court is located in the capital because of the limited resources in the country and the fact that it is the only place with access to the Internet and legal materials. Nevertheless, the Government provides the office of the peoples' lawyer with funding every year for those who wish to obtain legal advice or representation free of charge. The office is provided with a budget for all islands, depending on the number of calls and requests for assistance, including in preparing cases to the High Court.

64. The Attorney-General explained that the Court of Appeal was established by law following independence, but that no one had appealed its decision prior to 2005. The first appeal case from 2006 is still pending and is a source of tension between traditional matters and freedom of religion as a right laid down in the Constitution. The main problem is financial resources, and the Government has sent out a request for assistance and is seeking judges from around the globe. She stated that Tuvalu has provided some funding to the Office of the Judiciary to launch the judicial work and that Tuvalu would welcome any assistance for the Court of Appeal to sit urgently in Tuvalu.

65. The Head of Delegation referred to questions on the establishment of a national commission on human rights and a human rights office and stated that the Government is conscious of the need to set up such mechanisms. Tuvalu is trying to find ways to implement this commitment realistically and without constraining other priorities. One proposal being considered is for the pooling of resources from small island States in the Pacific to a regional human rights facilitating institution overseen by the Secretariat of the Pacific Community and the Pacific Islands Forum. Through such an institution, assistance could be provided to launch human rights actions in small island countries like Tuvalu and support the pursuance and implementation of human rights actions, including acceding to relevant conventions on human rights. Tuvalu considered this a very practical approach and pursues dialogue with the Secretariat of the Pacific Community and the Pacific Islands Forum on the possibilities.

66. In closing, Tuvalu referred to the many pertinent issues raised, and thanked all delegations of the Working Group for their comments and the offers for assistance. The Head of Delegation also expressed appreciation in particular to the regional bodies that had assisted Tuvalu, and noted that the universal periodic review was a process which should lead not only to a periodic report but also to improving the actual human rights situation on the ground.

II. CONCLUSIONS AND/OR RECOMMENDATIONS

67. The recommendations formulated during the interactive dialogue have been examined by Tuvalu and the recommendations listed below enjoy the support of Tuvalu:

1. Ratify human rights treaties to which Tuvalu is not yet a party (Brazil); ratify, in particular, the International Covenant on Economic Social and Cultural Rights and the International Covenant on Civil and Political Rights (Switzerland, Italy); ratify core international human rights instruments, in particular the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights (Canada); give positive consideration, as a matter of priority, to ratification of at least the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights (Mexico); consider ratifying other key treaties, particularly the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights (Slovenia); sign the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights (Australia); sign and ratify the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights as soon as possible (France);
2. Consider the possibility of acceding promptly at least to the main international instruments, such as the International Covenant on Civil and Political Rights, the International Covenant on Economic, Social and Cultural Rights and the International Convention on the Elimination of All Forms of Racial Discrimination (Algeria); ratify the Convention against Torture (Switzerland);
3. Make good use of technical assistance from OHCHR to ratify expeditiously several major human rights treaties, including the International Covenant on Civil and Political Rights, the International Covenant on Economic, Social and Cultural Rights, the Convention against Torture and the International Convention on the Elimination of All Forms of Racial Discrimination (Japan);
4. Meet its reporting obligations under the Convention on the Rights of the Child (United Kingdom);
5. Extend a standing invitation to human rights special procedures (Mexico); issue a standing invitation to all special procedures (Czech Republic); consider extending a standing invitation to all special procedures of the Council (Latvia);
6. Effectively strengthen its human rights institutional framework and further promote concrete programmes to raise awareness of human rights (Czech Republic);
7. Establish a national human rights institution in accordance with the Paris Principles (France); call on the international community to offer very much needed technical assistance to Tuvalu as stipulated and outlined in paragraph 77 of the national report and to address the call by Tuvalu for technical assistance in the establishment of a human rights institution (Zambia);

8. Build a national commission for human rights and a human rights office in the country, and provide human rights education programmes and awareness-raising activities, calling upon the international community to consider technical assistance and financial support (Brazil);
9. Persevere along its path and ask the international community to provide all the technical and financial support needed by Tuvalu during this process, particularly for the setting up of a national human rights institution in conformity with the Paris Principles; continue its efforts to harmonize national legislation with international human rights instruments; continue awareness raising and dissemination of human rights principles among the population at large; and conduct human rights training for officers responsible for law enforcement (Morocco);
10. Prioritize necessary reforms to modernize legislation and eliminate all forms of discrimination (United Kingdom);
11. Keep working in cooperation with OHCHR on the theme of the upcoming Review Conference on racism, racial discrimination, xenophobia and related intolerance as it enters the final phase of its preparatory process (Brazil);
12. Develop a comprehensive strategy to reduce domestic violence in Tuvalu, including by raising public awareness of the issue and identifying ways to combat such violence (New Zealand); implement effective means to ensure greater public awareness of the issues of domestic violence and gender discrimination and encourage greater involvement of Government agencies and civil society in efforts to address these issues (Australia);
13. Convene the Court of Appeal in the interest of addressing the pending appeal to the High Court ruling of 2005 on the case of *Teonea v. Kaupule* (Canada);
14. Continue actions and efforts to promote and protect human rights effectively on the ground and towards achieving the objectives set out in its national strategy for sustainable development (Cuba);
15. Step up efforts on raising the awareness of the population of the impact of climate change and involve the population more in the decision-making process in mitigating and adapting to the consequences of such changes (Switzerland); continue to play an active role in promoting international cooperation to combat climate change (Philippines); continue to engage with the international community, particularly the major emitting countries of the developed world, many of whom are States members of the Council, working with them in order to protect the human rights of Tuvaluans by securing significant global reductions in greenhouse gas emissions (Maldives); participate in discussions in the Council, scheduled for March 2009, on the relationship between human rights and climate change, in order to send a strong message to the parties to the United Nations Framework Convention on Climate Change on the importance of reaching an effective and workable global agreement on climate change mitigation and adaptation (Maldives);

16. Accord appropriate attention to the education sector in the medium and long term as the only way to correct the lack of human resources and institutional capacities in the country (Algeria);

17. Work with civil society on follow-up to the review (United Kingdom).

68. The following recommendations will be examined by Tuvalu, which will provide responses in due time. The response of Tuvalu to these recommendations will be included in the outcome report to be adopted by the Council at its tenth session:

1. Work towards reaching the human rights goals set by the Council in its resolution 9/12 and to strengthening its public policy guaranteeing the rights of the child, with special attention to children without parental care (Brazil);
2. Incorporate fully in its legislation the provisions of the Convention on the Rights of the Child to enhance the protection of children's rights (Italy);
3. Continue cooperation with OHCHR with a view to making necessary improvements in the fields of legislative reform on the punishment of sexual abuse of children, land and family laws, and the establishment of a national human rights commission and a human rights office (Turkey);
4. Consider appointing an Ombudsman with responsibility for investigating alleged violations of human rights as a short-term measure (New Zealand);
5. Amend the Constitution to prohibit discrimination against persons with disabilities (New Zealand);
6. Eliminate any legislation that has discriminatory effects against women, implement the relevant recommendations of the Committee on the Elimination of Discrimination against Women, and introduce a gender-specific dimension to the anti-discrimination provision of the Constitution (Switzerland); continue to strengthen measures to promote the equal rights of women and to counter discrimination (Philippines); adopt a law that prohibits discrimination on the basis of gender (Netherlands); amend the Constitution to include freedom from discrimination on the grounds of sex (New Zealand); incorporate in its legislation, at all levels, including at the level of the Constitution, provisions banning discrimination on the grounds of sex and gender (Mexico); stay strongly committed to the topic and further discussion leading to an amendment of the Constitution prohibiting discrimination based on sex and gender (Germany); establish equality between the sexes in the Constitution and take all necessary measures to counter gender-based discrimination (France);
7. Penalize rape, whoever is responsible, including marital rape (France);
8. Reform the Penal Code to cover offences such as sexual abuse against minors and to eliminate corporal punishment (Mexico);
9. Improve the implementation of the law on granting asylum (Netherlands);

10. That features of Tuvalu's legal framework, which incorporates customary law but excludes those precepts which may be perceived as violations of human rights, and which always give precedence to the interpretation of law that is compatible with the international obligations, be singled out as good practices in the field of human rights (Mexico).
69. The recommendations noted in the report in paragraphs 31(b) and 50 (a) above did not enjoy the support of Tuvalu.
70. 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 Tuvalu was headed by H.E. Mr. Enele Sopoaga OBE, Permanent Secretary, Department of Foreign Affairs and Labour and composed of five members:

Ms. Eselealofa Apinelu, Attorney General, Government of Tuvalu;

Mrs. Manaema Saitala Takashi, Multilateral and International Affairs Officer,
Department of Foreign Affairs and Labour, Government of Tuvalu;

Mr. Seve Lausaveve, Permanent Secretary, Department of Home Affairs;

Mrs. Imrana Jalal, Human Rights Advisor, Pacific Regional Rights Resource Team.
