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### Draft report of the Working Group on the Universal Periodic Review\*

### Tonga

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\* The final document will be issued under the symbol A/HRC/23/4. The annex to the present report is circulated as received.

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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 fifteenth session from 21 January to 1 February 2013. The review of Tonga was held at the 2<sup>nd</sup> meeting on 21 January 2013. The delegation of Tonga was headed by Lord Vaea, Minister for Internal Affairs. At its 10th meeting held on 25 January 2013, the Working Group adopted the report on Tonga.
2. On 14 January 2013, the Human Rights Council selected the following group of rapporteurs (troika) to facilitate the review of Tonga: Angola, Costa Rica and Pakistan.
3. In accordance with paragraph 15 of the annex to resolution 5/1 and paragraph 5 of the annex to resolution 16/21, the following documents were issued for the review of Tonga:
  - (a) A national report submitted/written presentation made in accordance with paragraph 15 (a) (A/HRC/WG.6/15/TON/1);
  - (b) A compilation prepared by OHCHR in accordance with paragraph 15 (b) (A/HRC/WG.6/15/TON/2);
  - (c) A summary prepared by OHCHR in accordance with paragraph 15 (c) (A/HRC/WG.6/15/TON/3).
4. A list of questions prepared in advance by Norway, Mexico, Slovenia, Spain and the United Kingdom of Great Britain and Northern Ireland was transmitted to 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 15<sup>th</sup> Session of the Universal Periodic Review Working Group, on 21 January 2013, Lord Vaea, Minister for Internal Affairs, introduced Tonga's second national report by first extending warm greetings and best wishes for the New Year 2013 from His Majesty King Tupou VI, the King of Tonga, Lord Tu'ivakano, Prime Minister of Tonga, and the people of Tonga, to the Working Group. He also congratulated the Council and the Working Group for the work achieved in 2012, and commencing the Second Cycle of the UPR process. He also thanked the troika of states, consisting of Angola, Costa Rica and Pakistan, for assisting Tonga's review, and also the advanced questions received from the United Kingdom, Norway, Slovenia, Mexico and Spain.
6. Lord Vaea referred to the adoption of Tonga's first universal period review in June 2008, as a milestone for Tonga. This was because it was an opportunity to showcase the fundamental human rights enshrined in the 1875 Tongan Constitution granted by King Siaosi Tupou I, and which Tonga had devotedly protected for 137 years. Lord Vaea also stated that the first review was an opportunity to highlight Tonga's aspirations to ratify new human rights conventions.
7. Lord Vaea however stated that the introduction of new human rights would involve a delicate balancing exercise of important factors, including limited resources, core Tongan cultural values, fundamental Christian beliefs and liberal ideologies. These unique circumstances should be recognised as to why Tonga has been slow to ratify the core human rights conventions. Tonga however continued to be active in supporting and

developing human rights aspirations through legislation, policies, training, awareness programmes, and supporting national, regional and international activities and initiatives.

8. In relation to democratisation and law reform, Lord Vaea reported that the democratisation of the Tongan political system had been completed. He reported that the process was led by the late King, His Majesty King George Tupou V, which was his legacy for Tonga, the Pacific region and the world. Lord Vaea then outlined the significant occurrences since 2008 in implementing democratisation, and also described the new political system.

9. Lord Vaea reported that the new revamped constitutional and political framework provides fundamental features of a free and democratic society to all Tongan citizens. The new constitutional and political system has demonstrated that it is robust and can resist challenges against unstable and ineffective Government. Lord Vaea however stated that the new system may not be perfect, but it was a significant achievement in making these profound changes, in a peaceful and orderly manner, within a period of four years. Lord Vaea acknowledged with appreciation the technical assistance offered during the constitutional and political reform process by donor States and international organisations, including the Governments of New Zealand and Australia, the European Union and the UNDP.

10. In relation to the ratification of the convention against torture, Lord Vaea referred to a question from Norway, for Tonga to explain why it had not ratified the Convention. Lord Vaea explained that torture, other cruel, inhuman or degrading treatment or punishment was prohibited under Tonga's criminal law, and addressed in legislation regarding evidence, extradition and mutual assistance in criminal matters. Further, the authorities responsible for investigation and prosecution of torture are responsive and effective, and the judiciary had imposed criminal sanctions that are a deterrent to potential offenders. Lord Vaea also highlighted that the occurrence of torture is not systematic in Tonga, and it is very rare. Lord Vaea confirmed Tonga's commitment to ratifying the CAT.

11. In relation to establishing safeguards against harsh treatment by police and security forces, Lord Vaea referred to a question from Norway as to what steps Tonga had taken to address the involvement of police officers in the maltreatment and death of civilians. Lord Vaea reported that police and security officers are prosecuted without exception, and offenders are disciplined and dismissed. The use of police intimidation tactics is a regular occurrence, but police violence against suspects is rare. In the last 50 years, there have been only two deaths at the hands of police officers. Lord Vaea also added that Tonga Police will install closed circuit television camera system, and conduct training on the new Tonga Police Act 2010, which provides modern police standards that respect human rights. Lord Vaea also reported that Government had appointed a new Police Commissioner, with the assistance of the Government of New Zealand, whose main task is to modernise Tonga Police. The Police Commissioner is supported by a significant tri-partite development assistance programme between the Governments of Australia, New Zealand and Tonga.

12. Lord Vaea also referred to a question from the United Kingdom of Great Britain and Northern Ireland as to what Tonga was doing to address the issue of police violence and any education programmes for its police officers. Lord Vaea stated that education programmes on the use of force was being provided, and together with training from overseas experienced police officers. He also reported that the Tonga Police was establishing a community level presence, and to hopefully regain public confidence. He also reported that Tonga Police had relinquished non-policing roles such as immigration and traffic registration and licensing, in order to concentrate on its core police roles. He also added that with regards to promoting human rights education programmes for police, security and penal personnel, the Tonga Police, Prisons Department and Tonga Defence

Services, were using their development programmes to educate their personnel on the observation and protection of human rights.

13. In relation to the protection of freedom of expression, information and the press, Lord Vaea stated that clause 7 of the Tongan Constitution enshrined this fundamental human right., and that the media enjoy relative freedom, subject to the laws of defamation, sedition and contempt of court. He reported that a Tonga Media Council by the Tongan media to regulate their own activities; however it was still in its infancy stages of development. He also reported that Tonga had adopted a freedom of information policy, that it was being introduced incrementally by all Government ministries and agencies. It is envisaged that the policy will be a basis to enact freedom of information legislation.

14. In relation to increasing awareness for persons with disabilities, Lord Vaea referred to a question from Slovenia as to how Tonga guarantees rights of persons with disabilities, and what improvements had been made in recent years. Lord Vaea reported that Tongan legislation offers the same protection of rights to disabled and non-disabled person, and that there was no discrimination in the law or in practice against disabled persons. The only gaps are the special rights for disabled, such as communication for persons who are without hearing or sight. Lord Vaea reported that Tonga has a policy on inclusive education for disabled persons, legislation requires access facilities to be built into public buildings for disabled persons, and that Tonga was supportive of regional efforts, such as the Biwaka Millennium Framework for Action, the Pacific Disability Forum and the Australia Pacific Islands Disability Support. Tonga acknowledged the assistance provided by the Government of Australia in this area. Lord Vaea also reported that there are two Disabled Persons Organisations who are active in pursuing the rights of disabled persons, and an organisation that provides rehabilitation services for disabled persons. He also reported that social clubs provide support for persons with disabilities on a regular basis.

15. Lord Vaea also referred to a question from Slovenia as to steps to include the provisions of the Convention on the Rights of Persons with Disabilities into domestic legislation, and the timeframe for ratifying the Convention. Lord Vaea reported that disabled persons have rights under Tongan law at a general level. Tonga could not provide a timeframe for the ratification of the Convention.

16. Lord Vaea then referred to a question from Spain on plans to improve living conditions of persons with disabilities and to eradicate discrimination against them. Lord Vaea stated that Tonga is encouraging commitment to improve the lives of persons with disabilities by way of support for Disabled Persons Organisations, and also regional plans of action. Furthermore, Tongan legislation does not discriminate against disabled persons. He also stated that Tonga was committed to ratifying the Convention; however no timeframe was available.

17. In relation to anti-corruption, Lord Vaea reported that the Tongan Government was establishing a fully independent Attorney General and Auditor General, and also enacting new legislation to create effective and efficient offices for the Anti Corruption Commissioner and Ombudsman. Tonga was committed to establishing and strengthening these anti-corruption mechanisms.

18. In relation to establishing a human rights institution, Lord Vaea referred to a question from the United Kingdom of Great Britain and Northern Ireland as to plans by Tonga to establish a human rights institution. Lord Vaea reported that Tonga was still not able to establish a national human rights institution, due to lack of resources. Government ministries and agencies observe and protect human rights collectively, but Tonga however recognises the importance of establishing a human rights focal point within Government, and hoped that donor partners would consider providing assistance for this initiative.

19. In relation to gender equality, Lord Vaea referred to a question from Norway as to ways Tonga had taken to improve gender equality and empower women, and steps taken to increase the number of women in decision making positions. Lord Vaea reported that Tonga had made significant commitment at a national, regional and international level to promote gender equality, and had also carried out activities to maintain gender equality. He then reported the number of women that are in decision making positions in Government, public enterprises, statutory boards, private businesses and churches.

20. Lord Vaea also referred to a question from Slovenia as to whether a gender perspective had been integrated into Tongan policies. Lord Vaea reported that one of the objectives of the Tonga Strategic Development Framework adopted in 2012 is to create strong inclusive communities by way of improving gender equality by implementing the Tongan Government's gender development policy. He reported that prosecution of domestic violence was carried out without exception, and that the Tongan Government was processing a Family Protection Bill. A Tonga National Study on Domestic Violence against Women was held in March 2012. He also reported that the Public Service Commission increased maternity leave period, and created paternity leave. He also reported that the Tonga Defence Services now allow retains soldiers who marry and have children, and that there were women commissioned officers in the Tonga Defence Services and the Tonga Police.

21. In relation to CEDAW, Lord Vaea referred to a question from the United Kingdom of Great Britain and Northern Ireland as to why Tonga had not ratified CEDAW, and any plans to become a party to CEDAW. Lord Vaea reported that in December 2011 Tonga decided to ratify CEDAW with reservations after a nationwide consultation would be undertaken to reach a consensus on the reservations, and the way forward for ratification. Lord Vaea then explained the privileges that women enjoy under Tongan social life, and any change needed to be managed carefully so that Tongan culture is not changed drastically, and to avoid disharmony. He stated that it is hoped that the consultation would be completed together with the enactment of the Family Protection Bill.

22. Lord Vaea then referred to a question from Spain as to what issues the CEDAW reservations would cover. Lord Vaea reported that CEDAW reservations may cover succession rights, abortion, land ownership, and same sex marriage. Lord Vaea highlighted that these were all sensitive issues to Tonga which needs to be fully canvassed by all stakeholders before ratification.

23. Lord Vaea then referred to a question from Norway as to the measures taken by Tonga to ensure equality between men and women in relation to ownership of land and property. Lord Vaea stated that the right of women to land is still an issue that is being considered given Tongan culture and the current land tenure system. He reported however that a Royal Commission of Inquiry made recommendations to amend the land laws to allow women more access to land.

24. In relation to the promotion and protection of human rights education and public awareness, Lord Vaea reported that Tonga had undertaken numerous training programmes, with the assistance of specialised regional organisations and donor agencies. Tonga was also taking new initiatives to improve human rights for its citizens, such as the adoption of a freedom of information policy; proposed access to free legal representation and also maintaining a high ranking in the UNDP human development index. Lord Vaea also reported that Tonga had benefited from human rights education and public awareness programmes offered by the South Pacific Community's Pacific Regional Rights Resource Team, the Governments of New Zealand and Australia, and the UNDP.

25. In relation to the ratification of the core international human rights treaties and optional protocols, Lord Vaea stated that Tonga had not ratified the core human rights

treaties, and referred to the explanation given at the start of the presentation. He then requested Member States to understand the Tongan circumstances, and that Member States continue to assist Tonga to pursue ratification, through the provision of technical assistance.

26. In relation to other questions that Tonga had received in advance, but were not directly covered in the second national report, Lord Vaea referred to a question from Mexico as to what obstacles Tonga faced in effectively implementing previous UPR recommendations. Lord Vaea highlighted that the main obstacles were the lack of resources, the delicate balancing exercise of significant factors unique to Tonga.

27. Lord Vaea then referred to a question from Mexico regarding plans by Tonga to prevent statelessness. Lord Vaea reported that Tonga had widened the scope of its nationality laws in 2007, and that more persons were now able to become Tongan citizens. He added that there had been no case of statelessness in Tonga. He also reported that naturalisation is still available, after 5 years residence and knowledge of the Tongan language; however the King has an absolute discretion to grant Tongan nationality to any person at any time.

28. Lord Vaea then referred to a question from Spain as to Tonga's opinion on the human right to drinking water. Lord Vaea reported that Tonga had not voted in support of the resolutions about the human right to drinking water because it was not present during the voting due to limited resources. He added that like many other small island developing states, Tonga has limited and scarce natural resources including water. Nevertheless Tonga continues to make its own national efforts to deliver this crucial resource to its citizens as best it can. Tonga is currently processing a Water Resources Bill in order to monitor and regulate water use. Any meaningful discussions on the right of access to clean water and adequate sanitation, including the scope of obligations, remain a matter of great importance to Tonga. Further, Tonga would be supportive of any efforts that involve any call on States and international organizations to provide financial resources, build capacity and transfer technology, particularly to developing countries, in scaling up efforts to provide safe, clean, accessible and affordable drinking water and sanitation for all.

29. Lord Vaea then concluded the opening statement by stating that Tonga remained committed to improving the level of its human rights obligations, and that Tonga requested States to understand and appreciate the unique circumstances that it faces when advancing human rights protection. Tonga also requested States to assist and support Tonga in advancing human rights, particularly gender equality, and persons with disabilities, and any other human rights that States are willing to assist Tonga with. Lord Vaea then expressed his appreciation to the Working Group for their attention, and wished them well for the work in the next few weeks, and the rest of 2013.

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

30. During the interactive dialogue, 40 delegations made statements. Recommendations made during the dialogue are to be found in section II of the present report.

31. Indonesia was encouraged by Tonga's constitutional and political reforms to strengthen democracy. It commended Tonga's willingness to attain international assistance to support democratic reform. It welcomed the enactment of legislation to eradicate institutional violence but noted that human rights education for public officials was still necessary. It commended steps taken towards the ratification of the CEDAW. It made recommendations.

32. Italy commended Tonga for the de facto moratorium on executions since 1982 and called for a total abolition of the death penalty. It regretted that Tonga had not yet acceded to numerous core international human rights instruments and encouraged the country to

urgently remove all obstacles preventing its ratification of ICCPR and ICESCR. It made recommendations.

33. Japan welcomed the enactment of constitutional and electoral reform legislation and of the freedom of information policy. It welcomed the campaign to combat domestic violence and efforts made towards the ratification of the CEDAW. Japan noted that Tonga had not submitted its first report to CRC and hoped it would do so as soon as possible. It made a recommendation.

34. Latvia thanked Tonga for its comprehensive report and welcomed the positive steps taken by the country to demonstrate its commitment to human rights. It referred to the issue of standing invitations to the special procedures of the Human Rights Council, which it had addressed during Tonga's last review. It made recommendations.

35. Malaysia was encouraged by Tonga's efforts to balance respect for civil and political rights with that of social and cultural rights. It commended Tonga's achievements in education. It considered that the Government's determination to improve protection and promotion of human rights in the country should be acknowledged and called on the international community to support the Government's request for technical assistance.

36. Maldives commended Tonga for its constitutional and political reforms. It welcomed Tonga's efforts to accede to the CEDAW and the appointment of women to high-level positions. It noted with satisfaction the implementation of recommendations regarding gender violence. Lack of funding was a major challenge for Tonga and Maldives thereby called on the international community to extend its support to the country.

37. Mexico welcomed Tonga's efforts to strengthen the democratic process and trusted that those actions would result in increased protection and promotion of human rights. Mexico noted measures taken to implement previous recommendations, including introducing legislation to combat corruption. It encouraged Tonga to intensify efforts to ratify human rights instruments not yet ratified and to bring its legislation into line with those. It made recommendations.

38. Morocco commended Tonga on the progress achieved towards creating a human rights infrastructure and supported efforts made by the complaints commissioner. It congratulated Tonga on the report conducted on land issues and asked whether women's access to urban property might be extended to rural areas. It requested information on the status of national consultations to incorporate human rights at different levels of public education.

39. New Zealand noted that, despite Government efforts, there was not equal participation between men and women in various areas of contemporary life. It welcomed measures taken and progress made in drafting legislation to protect women from violence and remained committed to supporting Tonga in that area. It made recommendations.

40. Norway noted that Tonga's commitments to ratify important human rights conventions had not been implemented. It expressed concern about reports of high levels of domestic violence and the fact that marital rape was not criminalized. It was also concerned that Tonga's legislation discriminated against women in the field of inheritance. Norway noted that Tonga had not used capital punishment since 1982. It made recommendations.

41. Philippines noted that Tonga was yet to accede to certain international conventions. It trusted that Tonga would attend to the need to protect vulnerable groups. It noted, despite the lack of adequate legislation in the area, the progress made to combat domestic violence and encouraged Tonga to intensify efforts to protect the rights of women and children. It made recommendations.

42. Singapore commended Tonga's commitment to promoting and protecting human rights. It noted Tonga's efforts to eliminate violence against women, including a national study on domestic violence and cooperation with regional and relevant United Nations organizations. It also noted Tonga's achievements in improving access of the population to education and the fact that Tonga was on track to meet MDG 2. It made recommendations.
43. Slovakia welcomed the implementation of legislative reforms and the establishment of a new parliamentary system. It appreciated Tonga's efforts to tackle discrimination and violence against women. It noted Tonga's recognition of an absolute prohibition of torture since 2007 and also acknowledged the establishment of a standards unit to address police conduct. It made recommendations.
44. Slovenia, with regard to the integration of a gender perspective in Tongan policies, noted positive developments in the protection of women's rights, such as the National Domestic Violence Unit. It observed that Tonga was unlikely to achieve MDG 3 in a timely manner. Slovenia noted that the age of criminal responsibility in Tonga was eight, which was below the international standard. It made recommendations.
45. Spain highlighted the significant improvement of political rights in Tonga since the 2009 constitutional reform and applauded Tonga's openness to technical cooperation. The identification of an agency or executive ministry to guarantee coordination with international human rights organizations would be instrumental in the improvement of the human rights situation in the country. It made recommendations.
46. Switzerland noted with satisfaction that Tonga had accepted its recommendations regarding the ratification of international human rights treaties but that, four years following the agreement to ratify those treaties, little progress had been made in that regard. It noted with interest the discussions on the ratification of the CEDAW but believed that all countries should ratify the core treaties. It made a recommendation.
47. Thailand congratulated Tonga for the progress achieved in human rights through significant political reforms. It welcomed Tonga's consideration of the establishment of a National Human Rights Institution and ratification of various treaties and urged the country to accede to the CEDAW and other human rights instruments. It commended the Government's commitment to empower and eliminate violence against women. It made recommendations.
48. Timor-Leste commended Tonga for strengthening democratic institutions and improving access to education. It noted, however, that the age of majority differed among various segments of the Tongan population. It noted that national consultations were being carried out to accede to the CEDAW with a reservation and hoped that Tonga would soon accede to that Convention and withdraw its reservation. It made recommendations.
49. Trinidad and Tobago congratulated Tonga on the constitutional and political reforms made and encouraged Tonga to build on those foundations. It noted with satisfaction efforts made with a view to achieving gender equality and protecting women's rights, and to strengthening human rights education. It applauded Tonga for actively engaging in climate change issues at regional and international levels. It made recommendations.
50. Turkey commended Tonga's efforts to accede to core international treaties and encouraged Tonga to continue in that vein. It welcomed dialogue aimed at establishing a human rights mechanism at national level. Turkey welcomed also the decision to review legislation on violence against women and children and hoped that new legislation addressing all forms of domestic violence would be enacted. It made a recommendation.
51. The United Kingdom of Great Britain and Northern Ireland encouraged Tonga to establish a human rights institution in compliance with the Paris Principles. It called upon Tonga to take steps to advance the legal position of women and asked how Tonga plans to

address discriminatory rules against women. While taking note of Police Act 2010, it was concerned about allegations against police officers and urged Tonga to take further measures in this regard, and to repeal all provisions that criminalise consensual same-sex conduct. It made recommendations.

52. The United States of America was concerned about Tonga's failure to adequately combat domestic violence and discrimination against women. It commended the Police Force and Justice Ministry for adopting a "no drop" policy. Conversely, it was concerned that children born in wedlock cannot be legally and fully adopted and that consensual sex between adults is criminalised. It made recommendations.

53. Uruguay acknowledged Tonga's accession to the ICCPR and ICESCR. It was concerned that Tonga is not party to the Convention on the Elimination of all Forms of Discrimination against Women and considered that Tonga's accession to this convention would be an important step in adjusting national standards to universal standards. It made recommendations.

54. Viet Nam noted the efforts and seriousness of Tonga in protecting and promoting human rights, and in implementing UPR 1st. cycle recommendations. It commended Tonga, a developing country, on achievements in constitutional building, legislation reform and MDG implementation. It made recommendations.

55. Algeria noted the legislative reforms in Tonga and the establishment of a new parliamentary system. However, it also noted that, while Tongan Courts apply some core human rights conventions, their ratification is useful to their further advancement. It appreciated Tonga's positive steps in promoting female participation in public life. However no women have been elected to Parliament and their economic empowerment faces persistent challenges in relation to low employment levels and wage gaps. It made recommendations.

56. Angola acknowledged legislation adopted regarding the rights of persons with disabilities and the right to education, and welcomed the efforts made by Tonga in promoting and protecting the rights of women including those pertaining to employment and especially the new policy of the civil service commission, which includes increased maternity leave for civil servants. It also welcomed Tonga's strategic development framework 2011-2014 including greater autonomy for women. It made a recommendation.

57. Argentina congratulated Tonga on the establishment of the Food, Women and Community Youth Development Division and commended it on implementing the Young Emerging Leaders Programme aimed at preparing young people to be human rights defenders. It made recommendations.

58. Australia commended Tonga's reforms since 2010. It considered that Tonga needs to extend its efforts to fully achieve MDG 3, despite its progress to meet gender equality in education. Australia commended Toga's efforts to promote gender equality and for progressing work on a Family Protection Bill. Nevertheless, rates of domestic violence remain high. Australia noted that the death penalty remains applicable. However, it recognised that Tonga is abolitionist in practice. It made recommendations.

59. Bhutan applauded Tonga's strides in meeting the challenges and constraints it faced in promoting its population's political, economic and social rights and in protecting women, children and persons with disabilities, including the reforms of 2010. It noted Tonga's efforts to advance the position of women and combat gender-based violence and discrimination. It made recommendations.

60. Brazil appreciated the reforms initiated in Tonga including the information policy of 2012. It welcomed Tonga's submission to public consultation of a Bill to address violence and against women: adoption of this Bill would be an important step towards further

protection of human rights. It also welcomed Tonga's efforts in acceding to CEDAW. It asked Tonga to consider reviewing the legal age of majority to ensure social equity in this respect. It made a recommendation.

61. Burundi strongly encouraged Tonga to pursue its policy for combatting violence against women and corporal punishment inflicted on children. Burundi welcomed the efforts made in Tonga in fighting against discrimination based on social class, religion and race. Furthermore, it encouraged Tonga to ensure that its labour code is actually enacted. It made recommendations.

62. Canada noted Tonga's progress in combatting corruption. It asked what specific steps Tonga has taken to improve governance and what further steps are planned in this respect, and to eventually eliminate graft in the public sector. Canada welcomed the reforms introduced in 2010, which should be consolidated to eventually lead Tonga to become a fully representative democracy. Canada remained concerned that freedom of speech and the press are not always protected in practice. It made recommendations.

63. Chile stated that Tonga's extremely vulnerable status with regard to climate and sea level variations imposes on its authorities a duty to confront such challenges, with the technical assistance of the international community. Chile appreciated the legislative reforms on violence against women and children and the process initiated to discuss and adopted a comprehensive legislation to combat domestic violence. It made recommendations.

64. China appreciated Tonga's efforts to promote and protect human rights, including gender equality, elimination of violence against women and human rights education for the police. Tonga has signed the ICRPD and is considering accession to the CEDAW. Taking note of the challenges faced by Tonga, China considered that the international community should provide Tonga with necessary financial and technical assistance in support of its social and economic development. It made a recommendation.

65. Costa Rica took note with satisfaction of the democratic reforms implemented by Tonga to gradually promote equity. It also highlighted Tonga's human rights training of police, security and penitentiary personnel. It was concerned at Tonga's poor ratification record of international human rights instruments and weak legal framework to protect human beings. It made recommendations.

66. Cuba recognised Tonga's progress in seeking better protection and promotion of human rights for all its citizens and specifically stressed progress in the area of human development indicators, the fight against poverty and health system improvement, despite financial limitations. Cuba welcomed the high level of literacy and advancement in higher education in Tonga. It made recommendations.

67. Estonia recognized the importance of the human rights agenda in Tonga. It invited Tonga to show strong commitment to justice and the rule of law, to ratify the Rome Statute of the ICC, to fully align its legislation therewith, to accede to the Agreement on the Privileges and Immunities of the ICC and to protect women's rights. It commended Tonga on its freedom of Information Policy, while encouraging it to take further steps with regard to freedom of expression and information. It made recommendations.

68. France noted that Tonga has ratified only very few international human rights instruments and that no progress has been made therein since Tonga's UPR in 2008. It made recommendations.

69. Guatemala highlighted Tonga's progress to combat domestic violence, despite the lack of national legislation on domestic violence and criminalisation of marital rape. It encouraged Tonga to continue presenting information on the achievements of its National Unit against Domestic Violence. The Tongan Supreme Court has upheld absolute

prohibition of torture, despite Tonga's non-ratification of the international convention on torture and its lack of legal provisions thereon. It made a recommendation.

70. Hungary noted with satisfaction the progressive developments in Tonga, including democratic elections in 2010, women's increased participation and incorporation of international human rights standards into police training curricula. It welcomed the steps taken to ensure equality in education, health care and employment for women and persons with disabilities, although gender discrimination persists with regard to land ownership and inheritance. Hungary noted that Tonga has not ratified yet the CAT. It made a recommendation.

71. Lord Vaea from the Delegation of Tonga thanked States for the warm reception expressed to Tonga's second national report, and also the efforts to provide useful and valuable recommendations. He added that the immediate response by the delegates would encourage Tonga to continue its commitment to human rights. He also stated that the recommendations offered were consistent with Tonga's objectives, and that Tonga was able to indicate that most recommendations would be considered favourably.

72. Lord Vaea stated that Tonga would definitely take these recommendations to heart, and would work to prioritise what it can achieve in the near future, and leave other recommendations as a goal for achievement further down the track.

73. Tonga however wished to provide the following brief comments in relation to some of the interventions.

74. In relation to rape within a marriage, the Criminal Offences Act was amended in 1999 which criminalised rape in marriage.

75. In relation to the ratification of the Rome Statute, Tonga is in the process of obtaining a policy decision to sign the Rome Statute.

76. In relation to the inquiry by Brazil regarding reviewing the legal provisions for the age of maturity, Tonga accepts that there is a general provision relating to the age of maturity for the nobility in the Constitution, and there are other provisions in the criminal, land and other context that provides for maturity for all. So far this has not being a legal issue in Tonga, but Tonga would review the situation and consider whether to have one general provision for age of maturity, and realign the other legal provisions.

77. In relation to the question from Canada regarding corruption, Tonga is continuing to strengthen anti-corruption measures by proposing an overarching Good Governance Commission to support the Anti-Corruption Commissioner and the new Ombudsman office in their activities, but at the same time maintaining their independence. Within the public service, the Audit Office regularly audit Government ministries and agencies. The Public Service Commission is also effective in combating corruption within the public service.

78. In closing, Lord Vaea thanked the Secretariat and translation staff for the assistance.

## **II. Conclusions and/or recommendations**

**79. The recommendations formulated during the interactive dialogue/listed below enjoy the support of Tonga:**

- 79.1. **Expedite the ratification of the CEDAW (Bhutan);**
- 79.2. **Accelerate its efforts to ratify CEDAW (Indonesia);**
- 79.3. **Complete its procedure to accede to CEDAW (Brazil);**
- 79.4. **Consider acceding to CEDAW (Philippines);**

- 79.5. Ratify CEDAW and adopt legislation to protect victims of domestic violence (France);
- 79.6. Continue its efforts for the ratification of CEDAW and ratify the Convention at the earliest possible date (Japan);
- 79.7. Take steps to ratify ICCPR, ICESCR, CEDAW and CAT (Norway);
- 79.8. Ratify in particular the two international Covenants, concerning on the one hand, the Economic, Social and Cultural Rights, and on the other hand, the Civil and Political Rights; CEDAW and CAT (Switzerland);
- 79.9. Ratify core international human rights treaties, including the ICCPR, ICESCR, CEDAW (Algeria, Viet Nam) and its protocol, the optional protocols to the CRC, and CAT (Timor Leste);
- 79.10. Ratify CEDAW (Australia, United Kingdom), CAT (United Kingdom of Great Britain and Northern Ireland), ICESCR, as well as ICCPR and CAT (Turkey);
- 79.11. Ratify the ICCPR (Chile);
- 79.12. Examine the possibility of ratifying CED, CAT and its Optional Protocol, CEDAW and its Optional Protocol, ICESCR, ICCPR and CRPD (*Convention on the Rights of Persons with Disabilities*) and its Protocol (Argentina);
- 79.13. Ratify both the CRPD and its Optional Protocol before the next UPR cycle (Hungary);
- 79.14. Ratify the Rome Statute of the International Criminal Court and fully align its legislation with all obligations under the Rome Statute (Latvia);
- 79.15. Ratify the core international human rights instruments as well as the Rome Statute of the ICC (France);
- 79.16. Accede to the Rome Statute of the International Criminal Court and ratify the CAT (Costa Rica);
- 79.17. Ratify and implement the CRPD (Mexico);
- 79.18. Consider ratification of the third Optional Protocol to the CRC on a communication procedure (Slovakia);
- 79.19. Accede to the Rome Statute of the ICC and its Agreement on Privileges and Immunities (Slovakia);
- 79.20. Ratify the Rome Statute of the ICC and accede to the Agreement on the Privileges and Immunities of the ICC (Estonia);
- 79.21. Consider ratifying core international human rights conventions, especially ICMW (*International Convention on the Protection of the Rights of All Migrant Workers and Their Families*) as well as ILO Convention 189 (*Decent Work for Domestic Workers*) (Philippines);
- 79.22. Ensure equal public participation through the introduction of a universal legal age of majority for all Tongan (Timor Leste);
- 79.23. Continue the momentum on the democratization process and improve the current policies and measures to ensure the equality and the full enjoyment of human rights and fundamental freedoms for all people, in particular the social vulnerable groups, like women and children (Viet Nam );

- 79.24. Continue to defend the fundamental values enshrined in its constitutional history and its tradition in its efforts to ensure the full enjoyment of all human rights, in particular economic, social and cultural rights (Cuba);
- 79.25. Continue to promote its social and economic development and try to eliminate poverty so as to lay a solid foundation for the full enjoyment of all human rights by its population (China);
- 79.26. Continue to develop its legal and institutional framework with respect to the promotion and protection of human rights (Bhutan);
- 79.27. Accede to the international human rights covenants and seek the support of OHCHR for the process of implementation of these treaties at the national level (Uruguay);
- 79.28. Promote the ratification of the different international human rights instruments most of which have not been ratified by the country, and continue to cooperate with the Human Rights Council and its mechanisms (Guatemala);
- 79.29. Extend a standing invitation to the special procedures (Guatemala);
- 79.30. Consider extending a standing invitation to all the special procedures mandate holders of the Human Rights Council (Latvia);
- 79.31. Intensify its efforts on human rights and environment with the newly appointed Independent Expert on Human Rights and Environment of the Council (Maldives);
- 79.32. Promote equality between sexes (Burundi);
- 79.33. Prioritize gender equality initiatives within its Tonga Strategic Development Framework and intensify its efforts to increase women's participation at all formal decision-making levels (New Zealand);
- 79.34. Take affirmative action to increase women's participation in political life (Slovenia);
- 79.35. Further develop concrete measures or steps to expand the representation of women in Government and Parliament as well as to other decision-making positions, as appropriate (Thailand);
- 79.36. Take further measures aiming at promoting women participation in public life and particularly their representation in Parliament (Algeria);
- 79.37. Adopt the draft Family Protection Bill (Maldives);
- 79.38. Enact a law criminalizing domestic violence and providing specific penalties for cases of domestic violence (United States of America);
- 79.39. Introduce and implement a comprehensive legal framework that protects women and girls against all forms of gender-based violence (Norway);
- 79.40. Prioritize legislation and domestic policies aimed at eliminating domestic violence and protecting women's rights and gender equality, particularly in relation to property, family and employment (Australia);
- 79.41. Take steps to prevent incidents of discrimination and violence against women (Canada)
- 79.42. Strengthen its efforts to combat violence against women, and in particular work with civil society to address the societal attitudes and behaviors that underlie high rates of domestic violence (New Zealand ); With the support

of the international community, continue to enhance efforts to combat violence against women (Singapore);

79.43. Adopt measures to fight against all forms of violence against women, in particular, criminalize domestic violence and sexual harassment (Spain);

79.44. Abolish any statutory provision which authorizes corporal punishment, in particular when the convicted is a child (Italy);

79.45. Examine the possibility of enshrining the prohibition of torture in its legal framework (Argentina);

79.46. Take measures to reinforce protections for freedom of expression in practice, including guaranteeing freedom of the press and Internet freedom (Canada);

79.47. Provide national, regional and international support to the promotion and universal realization of the human right to potable water and sanitation, in accordance with the recommendations made by the Council in its different resolutions on this matter (Spain);

79.48. Facilitate the access of women to sexual and reproductive health services (France);

79.49. Continue its progress in the field of human rights education through increasing further international and regional cooperation (Indonesia);

79.50. Continue pursuing its efforts in upholding respect for human rights and the well-being and development of its people through education, in line with its Education Policy Framework 2004-2019 (Malaysia);

79.51. In cooperation with UNESCO and other relevant organizations, continue to step up efforts to improve access to quality education (Singapore);

79.52. Continue the policy of free and compulsory education through cooperation with and assistance from the international community (Bhutan);

79.53. Reform the Nationality Act to include safeguards against statelessness, so that children born in Tonga's territory, who would otherwise be stateless, can acquire Tongan nationality (Slovakia);

80. The following recommendations enjoy the support of Tonga which considers that they are already implemented or in the process of implementation

80.1. Continue its efforts in implementing constitutional and democratic reforms (Malaysia);

80.2. Immediately criminalize rape within marriage (Norway);

80.3. Adopt a specific domestic violence legislation to criminalize rape in marriage (Italy);

81. The following recommendations will be examined by Tonga which will provide responses in due time, but no later than the 23<sup>rd</sup> session of the Human Rights Council in June 2013.

81.1. Establish a national human rights institution in conformity with the Paris Principle (Burundi) to monitor Government action in this area, advise on legislation and the application of international human rights instruments, facilitate interaction with international and regional organizations, promote human rights education and file legal complaints (Uruguay);

- 81.2. **Seek the support of the international community for the establishment of a national human rights institution and finalize the revision of its constitution (Angola);**
- 81.3. **Continue its efforts to create a national human rights institution (Turkey);**
- 81.4. **Give consideration to implement laws prohibiting sexual discrimination and affirmative action policies aimed at increasing women's participation in Parliament (Trinidad and Tobago);**
- 81.5. **Examine the possibility of strengthening measures to eliminate all discriminatory treatment related to sexual orientation or gender identity (Argentina);**
- 81.6. **Bring its national legislation into conformity with its commitment to equality and non-discrimination, by repealing the provision in the Penal Code to criminalize sexual relations between consenting adults of the same sex (Norway);**
- 81.7. **Decriminalize consensual sexual relations between same-sex adults, and combat cases of discrimination against those persons (Spain);**
- 81.8. **Repeal the provisions of the Tongan Criminal Offences Act criminalizing consensual sex between adults of the same gender (United States of America);**
- 81.9. **Amend its legislation to repeal laws which criminalize consensual adult same-sex relations (Canada);**
- 81.10. **Abrogate all penal provisions criminalizing sexual relations between consenting adults of the same sex (France);**
- 81.11. **Amend its legislation to include the principle of equality between men and women and give men and women equal rights of inheritance (Norway);**
- 81.12. **Repeal legislation that deprives women from some rights, such as the right to inheritance and land ownership (Chile);**
- 81.13. **Enact legislation to prohibit discrimination on the basis of gender, including with regard to land rights (Slovenia);**
- 81.14. **Develop a more gender balanced land ownership law, building on the recommendation of its Royal Land Commission regarding land allotment (Hungary);**
- 81.15. **Take the necessary steps to abolish the death penalty (Norway);**
- 81.16. **Proceed to a formal and effective abolishment of death penalty through the ratification of the 2<sup>nd</sup> Optional Protocol to the ICCPR (Spain);**
- 81.17. **Ratify ICCPR and its Second Optional Protocol (United Kingdom of Great Britain and Northern Ireland);**
- 81.18. **Abolish the death penalty (Australia) and ratify ICCPR and its Second Optional Protocol (Australia, United Kingdom of Great Britain and Northern Ireland);**
- 81.19. **Abolish the death penalty, considering the existence of the de facto moratorium (Chile);**

- 81.20. **Adopt a moratorium on executions with a view to the definitive abolition of the death penalty (France);**
- 81.21. **Take steps towards full abolition of capital punishment, with immediate effect in particular towards juvenile offenders (Slovakia);**
- 81.22. **Explicitly prohibit death penalty for offences committed by persons below 18 years of age, pursuant to the General Assembly resolution adopted on 20 December 2012 and Article 37 of the Convention on the Rights of the Child (Italy);**
- 81.23. **Eliminate the use of corporal punishment as criminal punishment (Costa Rica);**
- 81.24. **Abrogate the penal provisions envisaging recourse to corporal punishment (France);**
- 81.25. **Raise the age of criminal responsibility to 12 years, and prohibit corporal punishment as a sentence of the courts for all persons, but especially those under 18 years old at the time of the offence (Slovenia);**
- 81.26. **Raise age of criminal responsibility, in line with the Convention on the Rights of the Child and prohibit corporal punishment in all grounds (Mexico);**
- 81.27. **Consider incorporating the UN Rules for the Treatment of Women Prisoners and Non-Custodial Measures for Women Offenders, otherwise known as the Bangkok Rules, as part of its work on the treatment of prisoners, in particular the new Prisons Act 2010 (Thailand);**
- 81.28. **Give abandoned children born in wedlock the same rights and protections afforded to children born out of wedlock (United States of America);**
82. **The recommendations below did not enjoy the support of Tonga.**
- 82.1. **Quickly (Italy) ratify CEDAW (Italy, Maldives, Slovenia);**
- 82.2. **Proceed swiftly with the ratification of CEDAW (Estonia);**
- 82.3. **Accede to CEDAW, without reservations that could be incompatible with the object and purpose of this Convention (Uruguay);**
- 82.4. **Intensify, as a matter of priority, efforts to effectively implement the standards of protection set out in CEDAW (Mexico);**
83. **All conclusions and/or recommendations contained in the present report reflect the position of the submitting State(s) and/or the State under review. 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 Lord Vaea, Minister of Internal Affairs, and composed of the following members:

- His Excellency Lord Vaea - Minister for Internal Affairs (Head of Delegation);
  - Mr. 'Aminiasi Kefu - Solicitor General;
  - Mr. Sonata Tupou - Charge d'Affaires, Tonga High Commission (London).
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