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NATIONAL REPORT SUBMITTED IN ACCORDANCE WITH PARAGRAPH 15(A) OF
THE ANNEX TO HUMAN RIGHTS COUNCIL RESOLUTION 5/1*

Tonga

* The present document was not edited before being sent to the United Nations translation services.

I. METHODOLOGY AND CONSULTATION

1. The Ministry of Foreign Affairs in consultation with the Prime Minister's Office was responsible for preparing and coordinating Tonga's national report submitted for periodic review by the Human Rights Council of the United Nations. The report was prepared following the general guidelines provided in the Elements for a Roadmap based on resolution 5/1 made on 18 June 2007 by the Human Rights Council, and on the General Guidelines for the Preparation of information under the Universal Periodic Review contained in Document A/HRC/6/L.24. This national report considers basic human rights and fundamental freedoms and the vulnerable sectors of Tongan Society such as children and women.
2. Consultation took place within capacity constraints. Briefings and preparatory work were undertaken with government ministries and agencies, including the Tonga Police and the Tonga Defence Services.
3. Almost all of the 49 civil society organisations that are members of the Civil Society Forum of Tonga (CSFT), which is funded by UNDP, were unaware of the UPR process. In recognition of its ongoing commitment to dialogue with civil society the Government met with CSFT and has considered their concerns. The Government has also taken into account a report by the one Tongan civil society organisation contributing to this UPR. The General Secretary of the Tonga Church Leaders Forum and the senior staff of the Life-Line Counselling Service were consulted. Discussions were held with the Chief Justice, the Minister for Justice and Attorney General, the Solicitor-General and the Vice President of the Tongan Law Society. In addition the Tonga Chamber of Commerce was consulted as was the President of the Tonga Media Council Inc.
4. The Kingdom of Tonga's development vision, its medium-term national development goals, and the strategies for achieving these goals are outlined in Strategic Development Plan Eight 2006/7-2008/9 (SDP8) entitled "Looking to the future, Building on the Past". This was a document formulated by the Central Planning Department on the basis of a lengthy and extensive consultative process¹, which was strongly supported by technical and financial assistance from the Asian Development Bank (ADB) and financial assistance from AusAID and NZAID.
5. Much of the content of SDP8 is relevant to this National Report for the UPR.
6. The Kingdom of Tonga believes that core values found in Tongan constitutional and customary history are reflected in international human rights documents. Core customary values of fe'ofa'aki (mutual love and caring, generosity), faka'apa'apa'aki (mutual respect), feveitokai'aki (reciprocity, cooperation, consensus; maintenance of good relationships), mamahi'i me'a (loyalty, commitment), lototoo (humility, generosity), fetokoni'aki (sharing, cooperation, fulfilment of mutual obligations) are embedded in the socialisation process of all Tongans. These codes of appropriate behaviour or "poto" are the means through which the intact circles of Tongan society and its inter-connected woven mats of relationships are protected and sustained. All these values denote a coherent, underlying philosophy of respect.
7. Respect for the inherent dignity of all persons finds expression in the opening words of the Universal Declaration of Human Rights, where such respect is described as contributing to freedom, justice and peace in the world. Respect for the dignity of all persons is the value most emphasised in Tongan custom.
8. The Tongan way of life is not solely based on the rights and responsibilities, freedoms and obligations of the individual but emphasises rights, responsibilities, freedoms and obligations to the extended family and whole community. While the values underlying

human rights may be worded differently than Tongan customary values, both express similar aspirations. Tonga's strength lies in collective group values and individual obligations. Tonga also appreciates that the rights of groups and the obligations of individuals to their communities exist in human rights documents. The challenge for Tonga is to find the appropriate balance between the basic rights and fundamental freedoms of the individual and those of the extended family and whole community in the modern-day and international contexts. Tonga, however, believes that the international human rights instruments describe rights, responsibilities, obligations and freedoms that can lead to a social order in which Tongan customary values can continue to be nurtured and respected.

9. Tonga's cultural and constitutional roots are innately strong. Tonga is proud of its 132 years - old Constitution in which are enshrined most of the basic human rights and freedoms which are the subject of this review. Tonga welcomes this periodic review and will listen thoughtfully to the comments of the Human Rights Council.

B. BACKGROUND INFORMATION ON TONGA

A. Overview

10. Tonga is unique among Pacific Islands Countries in that she has retained most of the characteristic features of her traditional indigenous governance. The archipelagos of "The Friendly Islands" were united into a Polynesian Kingdom in 1845. Tonga became a constitutional monarchy in 1875 from the promulgation of its Constitution. Because of possible annexation by rival foreign powers she became a British protectorate in 1900. She concluded this protectorate status in 1970 and joined the Commonwealth of Nations in the same year.

B. Government

11. Tonga enjoys a hereditary constitutional monarchy with a unicameral Legislative Assembly composed of 14 Cabinet members sitting ex officio, there are 9 elected representatives of the nobles, and 9 representatives of the people elected by universal suffrage. The Head of Government, the Prime Minister, is appointed by the Monarch from among the elected representatives and serves at His Majesty's pleasure.

C. Constitution

12. Promulgated in 1875, Tonga's Constitution is one of the oldest written Constitutions in the world. Its promulgation followed a sequence of far-sighted and revolutionary initiatives by the founder of modern Tonga, King George Tupou I, beginning in 1839 with the codification of the Vava'u Code. Essentially these Codes represented the initial steps towards the elimination of feudalism and its associated abuses of human rights. This culminated in the emancipation of the people from serfdom in the Emancipation Code of 1862. A brief analysis of the Constitution and its current revision is provided below.

D. Legal system

13. Acts of the Legislative Assembly; based on English law. Court system based on English Common Law. Unlike former British Colonies where the British laws were imposed on Colonial subjects, Tonga has used English Law as a model but has its own Tongan approach to English Law.

E. Official languages

14. Tongan and English.

F. Judiciary

15. Supreme Court (judges appointed by the Monarch in Privy Council); The Privy Council consist of His Majesty, Cabinet, the Governors of Vava'u and Ha'apai; Court of Appeal comprised of three (3) Judges and the Chief Justice of the Supreme Court; Magistrates' Court; Land Court. Senior Judges all expatriate. Current Chief Justice is Ford CJ of New Zealand.

G. Land area

16. The total Land Area is 747 km² spread among 170 islands of volcanic and coral origin in four groups.

H. Maritime space

17. Approximately 640,050 km².

I. Population

18. Census November 30th 2006: 101,991 on 36 inhabited islands; Tongatapu's population is 72,045 that include 71 per cent of the Tongan Population. The population classified as urban was 23658 or 24 per cent of the total. Tonga has a young population with a median age of 21 years. Natural birth rate of 2.2 per cent. Population growth rate: 0.4 per cent per annum. Net migration rate: 1.8 per cent per annum.

J. Gross domestic product

19. 2004/05: T\$455.9 million; US\$235.0 million GDP. Composition (2004/05): primary sector 25 per cent; secondary sector 18 per cent; tertiary sector 57 per cent. GDP per capita (2004/05): T\$4,560; US\$2,350. Remittances (2004): 42.5 per cent of GDP. Tonga's exports are predominantly agricultural. A high proportion of food is imported from New Zealand. Tonga has a reasonably sound basic social and economic infrastructure.

K. Human development index

20. 2008: 0.819, placing Tonga at 55 out of 177 Countries. Tonga is the only Pacific Island country in the High Development category which includes Australia (#3) and New Zealand (#19). The other Pacific Island Countries ranking in HDI for 2008 are: Samoa #77; Fiji #92; Vanuatu #120; Solomon Islands #129; and Papua New Guinea #145.

L. Constitutional Framework and Political Reforms.

21. The public announcement on 10 November 2004 that His Late Majesty, King Taufa'ahau Tupou IV would add four new Ministers to Cabinet from those elected into the Legislative Assembly in March 2005 was a watershed event in Tonga's history and the beginning of the contemporary process of political reform in Tonga. Up until then, His Majesty had traditionally chosen Ministers from outside of the Legislative Assembly and they became members of the Assembly by virtue of their Ministerial positions and did not have to seek election.

22. This public announcement was recognition by His Majesty of the need for political reform and a response by His Majesty and Government to the call for a more democratic form of government.

23. This initial phase of political reform followed the Economic and Public Sector Reform Programme (EPSRP) that started in 2002 which introduced fiscal, public service, financial sector and private sector reforms.

24. The appointment of the 4 new elected Ministers into Cabinet in March 2005 was followed by the Royal endorsement of the creation of the National Committee for

Political Reform (NCPR) by the Legislative Assembly in November 2005 and the Royal appointment of the first commoner and elected People's Representative, Dr. Feleti Vaka'uta Sevele, as Prime Minister in March 2006.

25. The NCPR conducted public consultations in every village in Tonga and also in metropolitan areas in Australia, New Zealand and the US with larger concentrations of the Tongan diasporas between February and August 2006. The Committee presented its Report and Recommendations to the Legislative Assembly in the beginning of October 2006. The Legislative Assembly also received two Proposals on political reform prepared by the Cabinet and the People's Committee for Political Reform.

26. The Legislative Assembly adopted "in principle" the Report and Recommendations of the NCPR and the Government proposed the setting up of a Tripartite Committee that would develop a consensus model out of the three different Proposals. The Tripartite Committee was to be made up of equal numbers of representatives from Cabinet, the People's Representatives and the Nobles Representatives. The People's Representatives rejected the Government's proposal for the Tripartite Committee and instead insisted on a ballot on their own Proposal for political reform. There then followed the riots of 16 November 2006.

27. In spite of the deaths and destruction of 16 November 2006, His Majesty King George Tupou V and the Government remain unwavering in their commitment to the constitutional and political reform process. In officially closing the Legislative Assembly on 23 November 2006 His Majesty stated:

"The events of the last few days have shaken our constitutional foundations. But our cultural and constitutional roots are innately strong. And we have been prepared by more than a century of constitutional government to be able to face the political tasks that lie ahead.... All the proposals that are now in the public arena have the same ultimate aim - a more democratic form of parliament and government but appropriate for Tonga. The differences among these various proposals are not irreconcilable, and can be resolved through dialogue."

28. In the beginning of July 2007 the Legislative Assembly created the Special Select Committee on Political Reform (Tripartite Committee) to review the different models for political reform that had been tabled and to address other issues relevant to political reform. There were 3 representatives from Cabinet, 3 Nobles' representatives and 4 People's representatives.

29. The Committee presented its two reports to the Assembly in early August and in early September. It recommended that there should be 9 Nobles' Representatives and 17 People's Representatives to the Legislative Assembly and that those 26 nominate the Prime Minister. The Prime Minister would then select his Cabinet from the elected representatives. The Committee also recommended that His Majesty may independently select four Cabinet Ministers either from the elected representatives or from outside of the Legislative Assembly.

30. The Legislative Assembly on 13 September 2007 voted to accept this model. They also voted for the constitutional and political reforms to be implemented in 2010. It should however be noted that consultations for the preparation of this UPR National report emphasised the need for this implementation to proceed when there is consensus that the people understand the substance and process and options for constitutional and political change.

31. Legislative Assembly elections under the existing structure will be held on 23 and 24 April 2008. It is expected that the new session of the Assembly will continue the dialogue on the issues relating to the political reform that are yet to be resolved. These include the new electoral boundaries and election system.

32. The Government is committed to a meaningful process of constitutional and political reform that will empower Tongan citizens to understand these proposals and encourage discussion about them. The Government has commenced national reconciliation and civic education workshops in the villages, funded by the European Union, as a way of empowering the people about the process of change and its future implications.

M. Legislative and policy measures

33. The criminal law provides a legislative framework for the constitutional right to due process and a fair trial. There is a public defender system to ensure an equality of arms in advocacy. Any person can engage in litigation. The rule of law is robust and the judiciary independent.

34. There is no formal human rights infrastructure in the sense of a national human rights institution. However there is a Public Complaints Commissioner who receives and investigates public complaints about government departments. In 2007 the Government passed legislation to establish an Anti-Corruption Commission. There is also the Ministry of Education, Women's Affairs and Culture that has a wide mandate for the advancement of women and children. The Ministry of Training, Employment, Youth and Sports specifically caters to the needs of the nation's young people.

35. Further discussion of the extent to which all human rights ought to be justiciable, whether a human rights commission is required or can be afforded by the Kingdom is likely to arise in the course of the public consultation on constitutional and political reforms.

36. In the meantime the Government continues to engage with civil society and religious-based organisations that focus on human and civil rights. These organisations have a presence at the village level where the most effective education and rights empowerment of people can be effected.

37. The government's ongoing dialogue with civil society and interest in the rights and freedoms of the people of the nation is clearly outlined in SDP8 which also contains Monitoring and Evaluation of some key human rights related goals.

O. International commitments

38. At this time the Kingdom of Tonga, like most of the other Pacific Island Forum States, has only ratified two international human rights treaties: The International Convention on the Elimination of All Forms of Racial Discrimination (CERD) and the International Convention on the Rights of the Child (CRC).

39. International treaties ratified by the Kingdom are not automatically incorporated directly into Tongan law. Instead, if any change in domestic law is needed to enable the Kingdom to comply with a treaty obligation, the Government makes that change, following normal parliamentary procedures, before it becomes a party to the treaty. The Kingdom's policy is not to ratify a treaty unless the Government is satisfied that domestic law and practice enable it to comply.

40. Tonga is a founding member of the Pacific Islands Forum. Tonga supports Forum initiatives for human rights development in the Pacific. Tonga is also a member of the Commonwealth of Nations and actively participates in Commonwealth Secretariat initiatives. Tonga became a member of the United Nations in September 1999. Tonga's Defence

Services (TDS) have contributed to peace keeping and peace building operations. The TDS Commander led the Forum peace mission in Bougainville. TDS and Tongan Police operate in the Solomon Islands, under RAMSI, and contribute to the joint forces mission assisting in Iraq.

III. PROMOTION AND PROTECTION OF HUMAN RIGHTS

A. The Constitution

41. The Kingdoms Declaration of Rights was well advanced for its time and reflected the customary values of respect and dignity referred to earlier in this report. The Tongan people are proud of this heritage. Under Tongan custom enforced by the Constitution of 1875 the possession of rights and freedoms is an inherent part of being a member of our society. The system of government in Tonga is a result of those wise and early arrangements for good governance in harmony with Tongan aspiration and culture. However His Majesty and Government have heeded the call for change and are committed to constitutional and political reform.

42. The Tongan Constitution contains a mixture of enforceable rights and general principles. Clause 1 promotes the worth, dignity and equality of all people by declaring their freedom and the right to work and own property. Most of the principles are in the Declaration of Rights and most of these are specific enough to be enforceable, such as the prohibition of slavery (clause 2), equality before the law (clause 4), freedom of worship (clause 5), freedom of speech (clause 7) and rights of fair trial (clause 10-15). These fundamental rights introduced in Tonga over 100 years ago are today commonly found in the Constitutions of most states. In addition there are Legislative provisions, orders and best practices that support a wider range of human rights adjunctive to due process. Any violation of a human right provided for in the law can be addressed in the courts.

B. The Judiciary and fair trial rights

43. Tonga is committed to the rule of law; the constitution protects the right of a fair trial. The law applies to all citizens without exception. A court may not summon anyone without providing a written indictment stating the charges. Trials are public, and defendants have the option to request a seven-member jury. Defendants are presumed innocent, may question witnesses against them, and have access to government-held evidence. Lawyers have free access to defendants. Defendants have the right to be present at their trials and to consult with a lawyer in a timely manner. There are rights of appeal. The courts run an efficient computerised case management system.

44. Tonga has a wise and independent Judiciary. Tongan Judges have independently applied reason and good judgment to any accusation of the infringement of human rights or attempts at the restriction of human freedoms. The Tongan government respects the independence of the Judiciary and their decisions.

45. Tonga observes that the traditional demarcation between international law and municipal law is slowly beginning to erode in many Pacific Jurisdictions. The textbook treatment of the relationship between both spheres of law has been changed by a new theory of harmonisation which under the force of judicial globalisation has been very much embraced in Pacific courts. Tonga is no exception to this process. Tongan Judges have demonstrated a willingness to incorporate international human rights standards and norms into decision making.

46. The Ministry of Justice has recently established a community law centre in the nation's capital city Nukualofa which provides a free legal aid service for indigent accused. A youth justice programme is being developed to separately attend to young offender needs

outside of the mainstream courts. The Ministry has also facilitated the non legislative introduction of a court diversionary scheme to provide for community based rather than formal criminal sanction against first offenders. These programmes demonstrate the Government's wider commitment to ensure the constitutional rights for a fair trial are meaningful. These programmes further confirm the Government's commitment to human rights and social justice values.

C. Voluntary Commitments

47. The Tongan Government believes that social, economic and cultural rights are important. It is fully committed to a vigorous development of Tonga's economic, social and cultural goals. It has consistently pursued a progressive agenda on social, economic and cultural policy and can point to the practical strategies of SDP8 and increased funding for education and healthcare as evidence of its commitment.

48. Free comprehensive health care for life and free education for the nation's children up to 14 years of age (a far-sighted policy dating back to 1875) points to a progressive domestic realisation of the rights set out in the International Covenant on Economic, Social and Cultural Rights (ICESCR) even though the Kingdom has not ratified this treaty. The development of these policies was accompanied by clear and attainable targets that have been monitored and evaluated on the way forward.

49. This is not to say that Government believes that there is no room for further improvement in the development of economic, social and cultural rights in Tonga. Rather that the Government has taken and will continue to take a range of measures by the adoption of policies and where capacity allows the change of laws that advance the economic, social and cultural well being of the people of Tonga. Further discussion on economic, social and cultural rights and the extent to which they ought to be justiciable is likely to arise in the course of the public consultation on a possible Bill of Rights and Responsibilities either separated from or incorporated into new Constitutional arrangements.

D. Public Awareness of Human Rights

50. The Ministry of Justice has an annual Law Week during which it runs public education programmes on specific human rights. In 2007 the focus was on "rights to land" and "rights to citizenship." These public education programmes included drama performed in public and on national television highlighting the problems relating to these rights which are commonly encountered. The National Reconciliation and Civic Education Programme of the Prime Minister's Office referred to earlier in paragraph 31 also educates on human rights and cultural values. This Programme has also provided financial assistance to 9 civil society organisations engaged in human rights advocacy and education.

51. There are also very active networks of civil society and religious-based organisations who focus on human rights education and advocacy including the: Civil Society Forum of Tonga; the Friendly Islands Human Rights and Democracy Movement; the Catholic Women's League and its Legal Rights Training Project, The Tonga National Youth Congress, The Langafonua 'a Fafine Tonga (National Women's Development Organisation); Life Line Programme of the Free Wesleyan Church of Tonga; National Centre for Women and Children; Tonga Community Development Trust; the Tonga National Council of Churches; the National Church Leaders Forum etc. Each of these organisations has its own public education and community awareness raising programmes that are not dependent on the Government for sustenance. The Government on its part is committed to working in partnership with these organisations to enhance the respect and enjoyment of the all the basic human rights and fundamental freedoms by all the people of Tonga.

52. Although “human rights” is not included as an examinable subject in the formal curriculum in primary and secondary schools in Tonga, it is nevertheless addressed as a component of the “Social Studies” and “Tongan Studies” syllabus. The formal curriculum for primary and secondary schools in Tonga is being reviewed under the Tonga Education Support Programme (TESP) with support from the World Bank and NZAID. The Ministry of Education is committed to ensuring that the new curriculum will address human rights issues that are relevant to contemporary Tonga.

53. Tonga is party to the Convention on the Rights of the Child and a participant in the UNESCO Associated Schools Project Network. Tonga is also committed to implement Resolution 38 adopted by the UNESCO General Conference in October 2007 to commemorate the 60th Anniversary of the Universal Declaration of Human Rights in December 2008. Our Ministry of Education has also adopted the basic themes for education as proposed by UNESCO: Learning to Know; Learning to Do; Learning to Live with others; Learning to Be.

E. Accountability and Oversight of the Police

54. The Tongan Police force comprises 415 constables. Recruits undergo professional police training based on a curriculum developed with other Pacific Island Countries. Police officers receive education about citizen’s rights and the care required of an officer when using policing powers, interacting with citizens and prisoner citizens. Matters of good police practice are identified and advocated through a Police strategic plan. The Police commander files an annual report through his Minister to Parliament.

55. The Tongan police force has its own enabling legislation. The Police Act (Cap. 35), section 45 provides for the independent review of any police officer’s abuse of powers or use of excess force. There are three levels of internal consideration. The Police professional standards unit receives and processes all complaints.

56. Police constables are not immune from civil suit or criminal prosecution. Once evidence of the use of unreasonable force is available anyone can sue the named Constable for civil damages.

F. The Accountability and Oversight of the Tongan Defence Services

57. The Tongan Defence Services (TDS) comprises a combined strength of 500 personnel in Army and Navy Units. All military personnel receive basic and continuing training in accordance with best practices under a curriculum developed from New Zealand and Australian forces. In particular the forces are trained in the law of armed conflict and Human Rights in post conflict settings. The TDS has served with distinction in regional and international peacekeeping operations as part of the peace-keeping operations in Bougainville, and in the Regional Assistance Mission to the Solomon Islands and in Iraq.

58. The armed forces disciplined role is clearly defined by the Constitution and the Tonga Defence Services Act 1992. The very first time the TDS were called on to support the civilian duties of the police force was during and after the events of the riots of the 16th November 2006. By the 16/11 a quarter of the armed forces had served overseas in peace keeping duties. Rules of engagement were strictly observed. Soldiers were armed. The TDS were authorised to use necessary force to uphold the law. There are reports of only one deliberate volley of shots fired in the air to disperse a rioting mob. No citizen was shot at, wounded or killed by TDS personnel. The Tongan government is confident that the TDS acted professionally and with restraint.

59. As with the Police the TDS has disciplinary procedures based largely on the British Defence Services Act system with the availability of summary disposal or courts martial

procedures for any complaint. Serious complaints come under the separate jurisdiction of the Judge Advocate General, presently the Chief Justice of Tonga, His Honour Ford CJ of New Zealand.

IV. IDENTIFICATION OF CHALLENGES ACHIEVEMENTS AND CONSTRAINTS

A. Challenges

1. Treatment of Persons Over and After the Riots of 16 November 2006

60. The Government does not condone the ill-treatment of any citizen. The Government respects the rule of law and the independence of the Judiciary. There are 320 riot related cases before the courts of Tonga. This represents a considerable number of charges against a considerable number of citizens that are now summonsed to court for trial. This number does not include the current and potential civil claims for damages as a result of policing action during and after the riots. This number does not take into account the legitimate expectations of riot victims for criminal redress or civil remedy. The Government wishes to ensure that the integrity of the criminal and civil court process is maintained and so does not accept that it is proper at this time for comment to be made that might affect that due process of law for either the prosecution or defence of civil or criminal trials. In respect of alleged abuse of police powers or systemic ill-treatment of those detained by the TDS or the police the Government awaits the courts findings.

2. Children

61. The Kingdom of Tonga has accomplished many Millennium Development Goals (MDGs) and World Fit For Children (WFFC) Targets. However, with approximately half of the population being under the age of 20 years and rapid social, cultural and economic, political and demographic changes children and young people face significant challenges.

62. Children who grow up facing these challenges are at risk of moving from petty crime to more serious offences, and of being unemployed or in low paid jobs, which will create more hardship for their families in the future. There are two groups of children that must be mentioned in this report:

63. Disparented Children: That is children not just of broken homes but also those children left behind in the care of extended families while their parents go overseas to earn an income and remit savings back to relatives in Tonga. Anecdotal evidence suggests that these children and their villages are disconnecting causing a drift by children into increasing patterns of anti social behaviour.

64. Deportees: This group, so labelled because as young Tongan citizens they have been “deported” to Tonga from New Zealand, Australia or the United States of America either after service of jail sentences in their adopted country or voluntarily by parents staying overseas but wanting their children to return home to extended family. These deportees are disconnected from Tongan culture. They bring with them values and practices that are foreign to Tongan custom. There are frequent reports of deportees and their associates moving away from village life becoming engaged in drug and alcohol abuse and subsistence crime.

3. Women

65. In the Tongan social structure women outrank their male relatives. Women are respected and cherished. The Department of Women within the Ministry of Education, Women, and Culture is responsible for facilitation of development projects for women. The office assists women's groups in setting up work programs.

66. Women outnumber men in educational achievement at primary, secondary and tertiary level. Leadership positions in business and government, including those of Governor of the Reserve Bank, Permanent Representative to the United Nations, Ambassador to the People's Republic of China, Attorney General and Solicitor General are all held by women. Despite women's powerful position in Tongan social structure and despite the opportunities for education and advancement there are issues to be addressed.

67. Government is concerned over the challenge of domestic violence. Women leaders and civil society all report upon the significance of this issue. The Government awaits an independent report on this serious social challenge.

68. Inheritance laws, especially those concerned with land, appear to discriminate against women. There is no freehold title to land in Tonga. Anyone can lease land. While women can lease land, inheritance rights pass through the male heirs. It should also be noted that the same land laws disinherit younger male siblings in any family and their heirs as only the eldest male can succeed to hereditary title. The government proposes amending the land laws to allow women to inherit land where there is no male heir. In addition Government has already changed the Nationality Act to allow women and their children to retain citizenship in any circumstance.

B. Achievements

1. Overview of Economic and Social Development

69. Tonga has made substantial progress in human development since the mid-twentieth century. The United Nations Human Development Report for 2008 ranks Tonga 55th of 177 countries, using a Human Development Index (HDI) that measures life expectancy, knowledge and the standard of living on the basis of 2003 data. This ranking places the country above all other Pacific Island countries and in the high human development category of countries and primarily reflects reasonably high levels of life expectancy (72.2 years) and educational achievement (a literacy rate of 98.9 per cent and a gross enrolment ratio in all levels of education of 83 per cent).

70. Tonga has made "good and steady progress" towards the MDG's.

71. The country has the second lowest incidence of poverty amongst 15 Pacific Island countries, as measured by the Human Poverty Index (HPI) presented in Pacific Human Development Report 1999; and a 2003 participatory assessment of hardship reported that "Most people perceived an improvement in their situation" in the previous five years, though this was not to deny the existence of some hardship.

2. Free Speech and Freedom of the Press

72. The Constitution provides for freedom of speech and of the press. Opposition opinion in the form of letters to the editor, along with government statements and letters, appear regularly in Government media. National media carry comments, including some by prominent citizens, critical of government practices and policies.

73. In the past there have been criticisms that the government did not always respect these rights in practice. The Government has now taken practical steps to enhance these freedoms and promote the counterbalanced obligation for the exercise of free speech to be both fair and informed.

74. The Government has worked with the media to establish an independent Media Council. The Government has facilitated short course training for both Government and private sector personnel in Media presentation and Public relations. Most importantly the Government has supported the development of a long term professional media and

journalism course. The Certificate and Diploma in Media and Journalism is a product of the commitment of the media industry, the vocational education sector and government to provide affordable access to quality, accredited training and professional development in media and journalism. The Tonga Institute of Higher Education together with five Pacific Island Technical Institutions, with the support of their governments and the financial assistance of AusAID have established this course.

3. Improvements in education

75. Tonga's education indicators are the highest in the Pacific. The second Millennium Development Goal of universal primary education was achieved long ago; and there is retention of almost all students to the mid-secondary school level.

76. These education indicators reflect a long tradition of formal education through a largely academic program, Government efforts to ensure access to education in the outer islands, and strong family commitment to improving living standards and social status through the education of children (both boys and girls).

77. The Tongan Education Support Program (TESP) aims at introducing minimum quality standards for primary and secondary schools and to allocate school-based grants to assist schools in progressively meeting these standards over time. Given that shortfall in standards occurs amongst the poorest schools, many of which are in the outer islands, TESP represents a major pro-poor policy initiative supported during the SDP8 period by NZAID and the World Bank.

78. The education related targets within the MDGs are incorporated into the Ministry of Education's Corporate and Strategic Plans (2003-2013), which endorsed the Government policy to improve the quality and relevance of universal basic education.

4. Improving health standards

79. Tonga's population has a relatively high standard of health. Life expectancy at birth has changed little over the past decade and in 2006 was 70.0 years for males and 72 for females. The infant mortality rate - a summary measure for population health status - for 2006 is 10.7 which is among the lowest in the Pacific. The maternal mortality rate is low, varying from 200 per 100,000 live births in 1995 to 41 in 1999 and 82.3 in 2004 (Annual Report MOH 2004). The under 5 mortality rate has fallen from 27 per 1000 in 1990 to 3 in 2006. Tonga has endorsed the Millennium Development Goals targeting reductions in child mortality and improvements in maternal health from the 1990 level by 2015 (Tonga's 1st National Report on the Status of the Millennium Development Goals):

80. Advances in the health indicators testify to Tonga's effective primary health care delivery, public health infrastructure and the importance of comprehensive antenatal and postnatal care, immunization, water and sanitation and waste disposal programmes. Infectious and most communicable diseases are under control, primarily as a result of water and sanitation and successful primary health care. The entire population is reported to have direct access to health care services (including essential drugs) within one hour's travelling time from home; and the immunization rate has increased from 95.2 per cent in 2000 to 99.6 per cent 2004 (Annual Report MOH 2004). However, constant vigilance is required to ensure that diseases such as tuberculosis and leprosy remain unproblematic.

81. The comprehensive health care vision of... Access to good quality care even for the remotest islands... Communicable disease eradicated, and non-communicable diseases minimized through screening and prevention, excellent clinical management and better co-ordination of health care services. is a significant achievement

5. Combating HIV/AIDS

82. Tackling the HIV/AIDS challenge requires concerted community education programmes backed up by ready access to condoms. This is not easy to achieve in a conservative society. Tonga's National AIDS Council (NAC) was established in 1988, initially as a political response to the emergence of HIV infections (Ministry of Health, 2003). Subsequently Tonga joined other Heads of Health Ministries throughout the Pacific in a collaborated effort to combat STIs and HIV/AIDS. This led to the development of the 'Strategic Plan for Responding to HIV/AIDS and STIs in the Kingdom of Tonga for the years 2001-2005'. The strategy calls for urgent attention to minimize and control the impact of STIs and HIV/AIDS on society, especially on youth and the economically active groups (Ministry of Health, 2002).

83. Health Promotion Section and Ministry of Health, Churches, NGOs, other government ministries are all working toward combating HIV and AIDS. Some part of the national health budget is allocated specifically to promote awareness and educate people on how to combat HIV and AIDS. Most of this fund dedicated for HIV and AIDS is covered by the assistance from the international organizations such as WHO, World Bank as well as bilateral and multilateral agreements.

84. The awareness raising is conducted through brochures, leaflets, booklets, TV and radio programmes, seminars and workshops.

6. Constraints

85. Tonga seeks understanding from the international community about the practical limits of her capacity, with just over 100,000 people and a modest economy.

86. The small size of the Tongan population makes the nation particularly vulnerable to problems associated with globalisation. The demands on Tonga to keep up with international obligations are outstripping the capacities of the nations systems of law and justice and diplomacy. This is not just a problem for Tonga but is a shared concern of many Pacific Forum States. That is why Tonga is a committed partner in the Pacific Forum cooperative arrangements for regional development described in the Pacific Plan.

87. The Ministry of Foreign Affairs, the Ministry of Justice and the Crown Law Department are modest in size and limited in capacity. These limitations were compounded by the loss of official records, documents and the law library as a result of the riot and fires of 16/11. Tonga like most small Pacific Island States does not have a separate Law Revision Commission or capacity for the high level legal advice required to consider the opportunities for greater participation in IBOR instruments

V. KEY NATIONAL PRIORITIES, COMMITMENTS AND INITIATIVES

A. National priorities

88. Government's national priorities as clearly outlined in SDP8 are of particular relevance to this National Report for the UPR particularly the following strategic goals.

1. Create a better governance environment

89. Good governance is seen as underpinning achievements in all areas of Tongan economic, social and political development. The strategies proposed by the development plan encompass the political system, public sector management and core governance institutions.

2. Ensure equitable distribution of the benefits of growth

90. The Tongan government acknowledges that there is inequality in the distribution of income between households and regions together with growing unemployment, especially of youth. This has created hardship for some groups. The development plan details the Government's commitment to addressing these issues through the Regional and Rural Development Programme, and developing other pro-poor policy interventions

3. Improve education standards

91. There have been commendable achievements in education, but concerns have arisen over issues of equity of access to, and quality of, the education being provided, as well as the readiness of school graduates for employment in a market economy. The development plan details ways in which the Government intends to achieve three specific objectives in order to improve education standards: (a) Improve equitable access to and quality of universal basic education for all children in Tonga up to Year 8 (Form 2); (b) Improve the access to and quality of post basic education and training to cater for the different abilities and needs of students (c) Improve the administration of education and training so that the quality of educational performance is enhanced.

4. Improve health standards

92. The Kingdom of Tonga operates a universal free health care system. As infectious and communicable diseases have been brought under control, non-communicable diseases (NCDs) have increased and now constitute a major public health challenge. Tonga's health system therefore confronts two tasks: (a) to maintain control of infectious and communicable diseases by providing essential primary health care services and controlling some lingering infectious diseases and respiratory disease; and (b) preventing, controlling and curing non-communicable diseases.

5. Maintain social cohesion and cultural identity

93. Tongan culture and society have been dynamic for many centuries, welcoming and adapting to many foreign influences, and taking advantage of overseas opportunities through migration. However, demographic and social change has accelerated in recent decades and posed new and demanding challenges. People under 21 now comprise the majority of the population; more young people are searching for work today than ever before; more students are dropping out of school; many families are under pressure; domestic violence has become an issue of concern; drug abuse is on the rise; and the rate of crime is increasing. Many of society's leaders are concerned over the erosion of traditional values and attribute this, at least in part, to the importation of cultural values and behaviours regarded by them as anti-social. These imported values are thought to cause some young people to question their identity and to lose their commitment to the education and personal development necessary to find productive employment.

94. The associated strategic goals announced in the plan have progressed as measured against a strategy matrix for monitoring and evaluating goal achievement.

B. Commitments

95. Tonga is not a state party to the International Covenant on Civil and Political Rights (ICCPR) or the International Covenant on Economic, Social and Cultural Rights (ICESCR). However, as the Kingdom's Constitution of 1875 foreshadowed several IBOR principles and as the Government is committed to a Constitutional review process reconsidering human rights, responsibilities, freedoms and obligations then Tonga welcomes this timely Universal Periodic Review of the Kingdoms human rights record. Tonga is committed to the substance

of these international obligations in domestic law. This report seeks practical assistance and guidance from the United Nations Human Rights Council and the International community to assist Tonga develop a harmony between custom and human rights that will empower the Kingdom to look to the future by building upon the traditions of the past.

96. In association with the proposed constitutional and political reforms the Government is interested in developing ways and finding the means to consider in a timely fashion the compatibility of domestic law and custom with the core IBOR.

97. The reporting requirements of international obligations are onerous. Tonga concedes that because of capacity restrictions and the priority demands for international representation in a globalised world it has found considerable difficulty in meeting some of its treaty reporting obligations. Tonga wants to improve in this regard, and, with the assistance of the international community, should have systems in place to address its reporting obligations.

98. Tonga invites dialogue with the Pacific representative of the OHCHR in this regard particularly about regional ratification mechanisms, Treaty report obligations and the provision of regional legislative drafting services and high level regional legal advice that might assist Tonga and other small Pacific Island Countries ratify and satisfactorily comply with basic human rights and fundamental freedoms.

99. The Government wishes to reiterate its commitment to constitutional and political reform.

C. Initiatives

1. Pacific prevention of domestic violence programme

100. The PPDVP is an initiative of NZAID, New Zealand Police (NZPOL) and the Pacific Islands Chiefs of Police (PICP). The long-term goal of the programme is a safer Pacific free from domestic violence. The focus is primarily on building the capacity of Pacific Police services to prevent/respond effectively to domestic violence. This will include the development and maintenance of effective partnerships between Police and other agencies/NGOs with a role in preventing/responding effectively to domestic violence. In 2006/07 NZAID commenced implementation of the Programme, this included successful recruitment and training of PPDVP implementing staff and in-country mentors

101. The Tongan Domestic Violence Unit was established in June 2007. There were 125 reported cases between August and December 2007. There were 68 reported cases between the January and March 2008. The government is committed to tracking and analysing these statistics in conjunction with the AusAID funded empirical survey of Domestic Violence in Tongan society.

2. Raising police standards

102. The Government is committed to raising the professional standards of the Tonga Police Services.

103. Two Tonga police trainers attended a Commonwealth Secretariat Human Rights Training Course in Vanuatu in March 2007. That initiative with the assistance of New Zealand and Australia has resulted in Tonga picking up the Pacific Regional Recruit Course as the core curriculum for police training. This course includes training in Ethics, Police Professionalism and Human Rights.

104. While the Government does not at this time believe it is appropriate to make any general comment over the standard of citizen treatment during and after the riots of 16/11 that is not to say that the government wishes to ignore individual action to redress any wrong perpetrated against citizens. As a result of public criticism of the police force after the events

of November 2006 the government has required the Police Force to review its strategic plan and reconsider best police practises. A police professional standards unit has been established for this purpose. The government is determined that the police force will revive its integrity and retain public confidence.

VI. CAPACITY BUILDING AND TECHNICAL ASSISTANCE REQUESTS

105. The Tongan Government invites the international community to consider providing:
- Technical assistance and financial support with the reconciliation and civic education programme with the people of Tonga;
 - Technical assistance and financial support with the redrafting of the Kingdoms Constitutional arrangements and consequent legislative changes to bring these into political effect;
 - Technical and financial assistance for any expanded rights and freedoms developed in conjunction with both constitutional and political reforms and international Treaty ratification; and
 - Technical and financial assistance to the CSFT to assist it in the valuable work of grass roots education and production of information for village communities about human rights especially at this time of proposed significant social change.

Notes

¹ In June-December 2005, individual and group discussions were held with village communities and officers in each of Tonga's island groups, private sector organisations and individuals, civil society organisations including the churches, all government ministries, and public sector authorities and enterprises. On 1 December 2005, a preliminary report on the findings of community consultations was presented to a meeting of civil society organisations; and on 2 December, an outline of SDP8 goals and strategies was presented to a Development Partners' Meeting in Nuku'alofa. Throughout, electronic commentary was invited on SDP8's structure and content through the Prime Minister's Office website - www.pmo.gov.to.

A preliminary draft of SDP8 was prepared by 15 December, circulated widely for comment and presented at regional meetings in Vava'u and Ha'apai in late February 2006 and at a National SDP8 Summit in Nuku'alofa on 21-22 March 2006. The plan subsequently was revised on the basis of comments on the preliminary draft received from line ministries, civil society organisations and development partners.
