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Report of the Working Group on the Universal Periodic Review*

Tonga

Addendum

**Views on conclusions and/or recommendations, voluntary commitments
and replies presented by the State under review**

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

I. National human rights institution

1. Tonga accepts the recommendations made under this thematic category, namely recommendations set out in paragraphs 81.1 (Burundi and Uruguay), 81.2 (Angola), and 81.3 (Turkey), of the Working Group report.
2. The establishment of a national human rights institution continues to be a difficult proposition for Tonga, given its very limited financial and human resources. The compromise is that Tonga intends to establish a Human Rights desk at either the Attorney General's Office or the Ministry of Internal Affairs.
3. The desk officer will thus be responsible for monitoring and driving human rights issues in Government policy, development and decision-making, and also drive Tonga's efforts to meet its international human rights obligations. Tonga recognises that this arrangement may be challenged in the aspects of independence and effectiveness, however this is the best option for now, based on current resources. One other possible option is to multi-task an Ombudsman, to be also the Human Rights Commissioner. Tonga undertakes to continue to consider setting up either a national human rights institution, or establishing something similar that will fit Tonga's context.

II. Sexual and gender equality

4. Tonga accepts the recommendations made under this thematic category, namely the recommendations set out in paragraphs 81.4 (Trinidad and Tobago), 81.5 (Argentina), 81.11 (Norway), 81.12 (Chile), 81.13 (Slovenia) and 81.14 (Hungary) of the Working Group report.
5. Tonga however does not accept the recommendations made under this thematic category, namely, the recommendations set out in paragraphs 81.6 (Norway), 81.7 (Spain), 81.8 (United States of America), 81.9 (Canada), and 81.10 (France) of the Working Group report.
6. The main recommendations regarding gender equality in Tonga were to: increase the participation of women in the legislature, eliminate all discriminatory treatment related to sexual orientation or gender identity, and the decriminalising of same-sex consensual sex.
7. The participation of women in the legislature is not prohibited by law, nor discouraged in any way by any national policy, practice or procedure. Women have always been encouraged to become candidates for the legislature, and in the past there have been a handful of women who were either elected representatives or appointed Cabinet Ministers who were in the legislature. In the last national elections in November 2010, there were a few women candidates, but unfortunately they were unsuccessful in the ballot box. Currently, there is one Non-Elected Representative in the Legislative Assembly who is a woman, and she is also a Cabinet Minister. The current Clerk of the Legislative Assembly is a woman, and the in-house legal counsel for the Legislative Assembly in Tonga is also a woman. So women did participate in the Tongan parliament, not only as representatives, but also as executive administrators.
8. Like other countries in the Pacific region, Tonga has enduringly and openly accepted persons with different sexual orientation or gender identity, and there is no discrimination policy or activities against such persons. This is done in the context of its conservative Christian values. The lesbian, gay, bi-sexual and trans-gender community has established an association to advocate for their rights, and they have been active in ensuring its members participant in mainstream social, economic and cultural activities. The 'Tonga Leiti Association', as they are known, are a partner association for the Tongan Government

and other civil society groups for public awareness and advocacy for promoting a healthy sexual life, and are also supported in entertainment, sporting and business activities.

9. The de-criminalisation of consensual sex between same sex adults is an issue that Tonga still wishes to consider further, through robust and comprehensive dialogue with a vast group of stakeholders. Whilst there is no doubt that such consensual adults are recognised and accepted as established members of the community, their lifestyle remains an issue to be further considered. Such dialogue will have to be conducted against the context of Tonga's embedded conservative Christian values, and also well established criminal policy that prohibits against the act of sodomy when it is committed between different sexes in a malicious and violent manner. Tonga however wishes to record that it has not yet prosecuted any same sex adults for committing the act of sodomy, and so far, the criminal prosecutions for sodomy have only been restricted in the context of criminal offending, rather than against consensual same sex partners.

10. Tonga is still considering the issue of access of women to land under Tonga's 138 year old land tenure system. Such a process is delicate and extensive, as it goes to the core of the Tongan culture.

11. Currently, women only have access to land if their husbands die leaving the surviving widow a life interest in the land, and also if a land holder dies leaving no surviving widow or sons, except unmarried daughters. Such widow and unmarried daughters hold the land only if they do not commit adultery or fornication or re-marry, and widows are not allowed to lease out their deceased husband's land.

12. In its recent final report released in 2012, the Royal Land Commission recommended that women above the age of 21 years old should be entitled to be granted only a town allotment, but not a tax allotment, because in the Tongan culture, it is the men who conduct plantation work, not the women. The Royal Commission also recommended that married daughters should be granted the land if the male landholder dies without leaving a surviving widow or sons. It also recommended that the statutory provision that forfeits the land inherited by a widow or unmarried daughter upon proof of adultery or fornication by the women should be repealed. Finally, the Royal Commission also recommended that widows be allowed to lease out their deceased husband's land, only with the consent of the next male heir, but where there are no sons, then no consent of the next male heir is required.

III. Capital and corporal punishment

13. Tonga does not accept the recommendations made under this thematic category, namely, the recommendations set out in paragraphs 81.15 (Norway), 81.16 (Spain), 81.17 (United Kingdom of Great Britain and Northern Ireland), 81.18 (Australia and United Kingdom of Great Britain and Northern Ireland), 81.19 (Chile), 81.20 (France), 81.21 (Slovakia), 81.22 (Italy), 81.23 (Costa Rica) and 81.24 (France) of the Working Group report.

14. Tonga will continue to retain the death penalty as the ultimate criminal sanction under its criminal justice system for the crimes of murder and treason. The Tongan Courts have already set the guiding policy that the death penalty will only be used, in the context of murder, "in the rarest of rare cases when the alternative option is unquestionably foreclosed". The death penalty is seen as a deterrent, and so far this has not increased the murder rate, nor is the murder rate high in comparison to the population. Tonga understands that it may be seen as a de facto abolitionist of the death penalty, however in reality it reserves its position on utilisation of the death penalty only to be used in the 'rarest of rare cases', where violence has been at its most abhorrent, the victim at its most vulnerable, the

impact universally and emotionally devastating and the alternative sentences do not qualify as appropriate or acceptable alternatives.

15. As for corporal punishment, Tonga adopts the same stance and policy as to the death penalty. Whipping is the only form of corporal punishment that is available under the criminal justice system, but it too will be retained as a deterrent, and used only at the most extreme cases when alternative sentences are not appropriate in the interests of the criminal justice system. The Tongan Courts has briefly considered corporal punishment in Tonga, its constitutionality and the stance of the international community and international law; however, the Tongan Courts have not yet expressly declared that corporal punishment under Tongan law is unlawful and unconstitutional.

16. Given Tonga's stance on capital punishment, Tonga will not ratify the Second Optional Protocol to the International Convention on Civil and Political Rights, which requires the abolishing of the death penalty.

17. Tonga however will continue to advance the civil and political rights provided for in the ICCPR, and continue its efforts to ratify the ICCPR and other core international human rights conventions, in accordance with Tonga's requirements, and balancing it with Tonga's international human rights obligations.

IV. Children

18. Tonga does not accept the recommendations made under this thematic category, namely, the recommendations set out in paragraph 81.25 (Slovenia) 81.26 (Mexico) and 81.28 (United States of America) of the Working Group report.

19. Tonga accepts that the minimum age of 7 years old for criminal responsibility of a child is appropriate for Tonga. Under article 40 of the Convention of the Rights of the Child, States Parties must establish the minimum age below which children shall be presumed not to have capacity to infringe the criminal law. Tonga has established that minimum age as 7 years old. However children aged between 7 and 12 years old may be criminally responsible if in the opinion of the Court or jury such person had attained sufficient maturity of understanding to be aware of the nature and consequences of his conduct in regard to the act of which he is accused. A child above the age of 12 years old can be fully responsible for any criminal actions.

20. Tonga believes that under Tongan law, abandoned children born in wedlock are offered the same rights and protections given to children born out of wedlock. If the child is abandoned at birth, regardless of being born in or out of wedlock, the child can be declared a ward of the Court under the Guardianship Act, and thus all the rights and protections of an adopted child can be given to the abandoned child.

21. Tonga however recognises that a child born in wedlock may be put under the care and custody of another adult under guardianship arrangements until the child is 18 years old and still remains the registered child of the biological parents, but such children however cannot be fully adopted as if a biological child of the new guardians.

22. A guardianship child however still has rights, as if they were the biological children of the guardians because, first, the guardians have a legal obligation to care and provide for the guardianship child. In both guardianships and adoptions, the Courts decide based on the 'best interests of the child', nothing else.

23. With regards to right to property, the guardianship child can still be bequeathed property of the guardians, except land. However, land can still be surrendered under the Land Act and regranted for the guardianship child. The guardianship child can also change

his or her whole name or part thereof, under the Registrar General's (Change of Name) Rules 2011, in order to use the name or surname preferred by the guardians. In other words, a guardianship child still has the rights and protection of adopted children, a guardianship child would need to undergo separate procedure due to the different nature of their status as guardianship child. A guardianship child is born in wedlock, and such legal responsibility will always be with the biological parents, and is only delegated to the guardians with the consent of the biological parents.

V. Prisoners: The Bangkok rules

24. Tonga accepts the recommendation made under this thematic category, namely, the recommendation set out in paragraph 81.27 (Thailand) of the Working Group report.

25. Tonga will continue its efforts to incorporate and implement the UN Rules for the Treatment of Women Prisoners and Non Custodial Measures for Women Offenders in its prison regime established under its Prisons Act 2010.

26. Currently, women prisoners are kept separate from male prisoners. Children born by women prisoners or who are still being breast fed, may be allowed to live with the mother in prison until circumstances do not permit, such as upon direction of the Courts, voluntary decision of the mother, inadequate facilities, the child starts attending school or security or good order issues. There are also rehabilitation programmes such as anger management, revival programmes and cultural and recreational programmes.

VI. Conclusion

27. Tonga again wishes to record its appreciation for this opportunity, to the Human Rights Council, the Working Group and the Troika of States of Angola, Costa Rica and Pakistan, in considering Tonga's second universal periodic report, and also to Member States, Observers and Non-Government Organisations for the support, constructive and valued feedback and most of all their patience. Tonga would also like to note special appreciation to the Governments of Australia and New Zealand for their support for Tonga's presentation in this second cycle.

28. Although there are still some human rights issues that require further dialogue and consideration both nationally, and also with international partners, Tonga is proud of its achievements so far, and it remains committed to protecting its people and all who sojourn into its territory to enjoy the freedoms and protections provided by its 138 year old modern state.

29. Tonga hopes that the international community will continue to show its support in this journey, especially through the provision of training and technical assistance to continue dialogue, in order to advance Tonga's human rights responsibilities.

30. Tonga remains committed and supportive to the work of the Human Rights Council, and wishes the best for its Member States and the Secretariat. Malo 'aupito.

Annex

Deferred recommendations that are supported by Tonga

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);

81.11. 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); and

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).

Deferred recommendations that are not supported by Tonga

81.6. Bring its national legislation into conformity with its commitment to equality and nondiscrimination, 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 (US);

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);

- 81.15. 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 2nd Optional Protocol to the ICCPR (Spain);
- 81.17. Ratify ICCPR and its Second Optional Protocol (United Kingdom);
- 81.18. Abolish the death penalty (Australia) and ratify ICCPR and its Second Optional Protocol (Australia, UK);
- 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); and
- 81.28. Give abandoned children born in wedlock the same rights and protections afforded to children born out of wedlock (US).
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