



HAUT-COMMISSARIAT AUX DROITS DE L'HOMME • OFFICE OF THE HIGH COMMISSIONER FOR HUMAN RIGHTS

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Excellency,

I have been following the third cycle of the Universal Periodic Review (UPR) of Tonga and welcome the constructive engagement of the Government during the 29th session of the UPR Working Group in January 2018.

As the final outcome report on the review of Tonga has been recently adopted by the Human Rights Council at its 38th session, I am writing to follow up on a number of areas raised in two reports that my Office has prepared for the review – the compilation of UN information and the summary of stakeholders' submissions – which I consider in need of particular attention over the next four and a half years, until the next cycle of the UPR. In identifying these areas, I have also considered the recommendations and/or statements made by 45 countries, the presentation and responses of Tonga, and the action taken by the Government to implement the 66 recommendations it had accepted during the second cycle of the UPR. The areas cover a range of issues and are set out in the annex to this letter.

I commend Tonga's efforts towards the recovery and rebuilding of the country in the wake of the devastating Tropical Cyclone Gita through redirecting its immediate priority and limited resources, which has presented a challenge in the Government's domestic engagement processes in addressing the recommendations from the third cycle of the UPR.

I note with appreciation the establishment of a committee comprised of relevant Ministries, Departments and Agencies to consider the ratification of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, and to review relevant legislation. I welcome the fact that the Attorney General's Office and the Ministry of Police have continued to take the lead in the assessment of Tonga's accession to international human rights treaties. I also welcome the standing invitation policy extended by the Government to all UN Special Procedures and I encourage Tonga to make use of these independent mechanisms.

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Hon. Mr. Samuela 'Akilisi Pohiva,
Prime Minister and Minister for Foreign Affairs and Trade
Tonga

I also welcome the fact that Tonga has developed and adopted several national strategies in key areas, including the Strategic Development Framework 2015-2025, the Revised National Policy on Gender and Development aimed at promoting women's rights and gender equality, the *Talitha* project "Let Girls be Girls" campaign aimed at preventing child, early and forced marriages, the zero-tolerance prevention policy and accountability for police brutality, the prevention of and firm response to curb violence against women, including domestic violence, the protection of the rights to education and health, the protection of the rights of persons with disabilities through the adoption of the National Policy on Disability Inclusive Development 2014-2018, as well as efforts to promote and protect the rights of the *Leiti* community. While I commend Tonga for introducing these policy measures towards promoting gender equality, it needs to accelerate the process of accession to the Convention on the Elimination of All Forms of Discrimination against Women.

I call on the Tongan authorities to strengthen their efforts and coordination to turn those strategies and implementation plans into concrete results in line with international human rights standards, in particular in the areas contained in the annex, and for the purposes of preparing Tonga's fourth cycle UPR through allocation of sufficient budget and close consultation with stakeholders, including national human rights institutions and civil society organisations.

I commend Tonga for the recent submission of its report on the implementation of the Convention on the Rights of the Child and encourage it to submit the 15th periodic report on the International Convention on the Elimination of All Forms of Racial Discrimination, which has been overdue since 2001. My Regional Office based in Suva, Fiji, remains committed to provide you with further support to fulfil your obligations under these treaties, including on reporting and follow-up on the recommendations.

I encourage the Government of Tonga to establish a national mechanism for comprehensive reporting and follow up in relation to international human rights recommendations and treaty obligations. I strongly recommend the use of the practical guide that my Office released in 2016 on this topic and which is available at:

http://www.ohchr.org/Documents/Publications/HR_PUB_16_1_NMRF_PracticalGuide.pdf.

Please be advised that I will be sharing my advice with all Member States as they go through the third cycle with a view to assisting them in implementing the UPR recommendations early on, following the review. An important measure that can contribute positively to the follow up of the UPR recommendations is voluntary mid-term reporting. I strongly encourage all Member States to submit a voluntary mid-term report two years after the adoption of the UPR outcome report. I encourage Tonga to submit a mid-term report for the follow-up of the third cycle of the review, by 2020.

As the Secretary-General states in his 2017 report on the work of the Organization (A/72/1, paragraph 98): "*The Human Rights Council's universal periodic review process is now entering a new cycle, with every Member State scheduled for a third round of scrutiny. We will work to strengthen the relevance, precision and impact of the Council's recommendations, including by providing better support to Member States in implementation, stronger collaboration with United Nations country teams and the establishment of national mechanisms for human rights reporting and follow-up to link the universal periodic review to the implementation of the Sustainable Development Goals.*"



I look forward to discussing with you ways in which my Office may assist Tonga to take action in the areas I have identified.

Please accept, Excellency, the assurances of my highest consideration.

A handwritten signature in blue ink, appearing to read 'Zeid Ra'ad Al Hussein'.

Zeid Ra'ad Al Hussein
High Commissioner for Human Rights



Annex

Scope of international obligations and cooperation with international human rights mechanisms and bodies

- Ratify the core international human rights treaties, including the International Covenant on Civil and Political Rights, the International Covenant on Economic, Social and Cultural Rights, the Convention on the Elimination of All Forms of Discrimination against Women, the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, and the Convention on the Rights of Persons with Disabilities, the Optional Protocol to CRC on the sale of children, child prostitution and child pornography within a reasonable period of time;
- Participate more fully with international human rights mechanisms and implement recommendations by special procedures so that there are institutional safeguards against harsh treatment by police and security forces;
- Submit regularly its reports to the treaty bodies, including the Committee on the Rights of the Child and the Committee on the Elimination of Racial Discrimination;
- Advise potential donor agencies of the type of technical assistance that would help to meet its treaty body reporting obligations;
- Adopt an open, merit-based process when selecting national candidates for United Nations treaty body elections;
- Share its experiences of the UPR with other Pacific Island States;
- Seek to renew its request for assistance to the OHCHR in this respect and also through the UPR Trust Fund established specifically to assist in the implementation of recommendations emanating from the UPR.

National human rights framework

- Proceed with the work of reviewing and making necessary adjustments to relevant domestic laws and regulations for the prompt ratification of CEDAW;
- Establish a national human rights institution in accordance with the Paris Principles;
- Create, if not a national human rights institution, at least one at the level of the group of Islands it belongs to, so that they may more effectively improve their human rights performance and implement their human rights obligations;
- Uphold the core values that are in the Tongan constitutional and customary history in its work to ensure full compliance with human rights and fundamental freedoms for all Tongans;
- Make efforts in the area of human rights education, training of public officials and on the participation of civil society in the promotion and protection of human rights, including through international and regional cooperation;
- Continue its endeavours towards better serving its people by securing a higher standard of human rights.

A. Cross-cutting issues

Equality and Non-Discrimination

- Commit to equality and non-discrimination by repealing the provisions of the Criminal Offences Act that criminalized same-sex sexual relations between consenting adults, combating discrimination against them and prevent violence by raising public awareness of the situation of lesbian, gay, bisexual, transgender and intersex persons;
- Strengthen measures to eliminate all discriminatory treatment related to sexual orientation and gender identity.

Development, the environment, and business and human rights

- Take all the possible anti-corruption measures;
- Implement its strategic development framework 2015–2025 to achieve sustainable economic and social development;
- Seek the technical and financial assistance needed to adequately address the climate change challenges and to reduce risk and implement early warning systems;
- Assess the impact of natural disasters, particularly with reference to the enjoyment of human rights by the poor and lower-income segments of the population and various other social groups, and assist them in becoming more resilient in the face of such disasters;
- Establish efficient and transparent public services in the country.

Right to life, liberty and security of person

- Consider complete abolishment of the death penalty;
- Enforce the legal and constitutional provisions concerning the prohibition of torture and cruel and inhuman and degrading treatment and punishment;
- Take specific measures at the legislative and administrative levels to prohibit the corporal punishment of children in both public and in private settings.

Administration of justice, including impunity and the rule of law

- Continue the democratization process, including efforts to enhance respect for the civil rights of its citizens to ensure equal and full enjoyment of fundamental human rights;
- Continue with determination and speed up the reform process;
- Establish separate juvenile courts.

Fundamental freedoms and the right to participate in public and political life

- Strengthen the independence of broadcast licensing in line with international standards;



- Adopt measures to strengthen the protection of freedom of expression, information and the press;
- Decriminalize defamation and place it within a civil code that is in accordance with international standards;
- Create a conducive environment for civil society to grow and thrive so that it might provide critical input for the development of public policies;
- Strengthen mechanisms for citizens, including civil society organizations, to participate in law-making, oversight, national planning and budgeting processes.

Economic, Social and Cultural Rights

Right to work and to just and favourable conditions of work

- Ensure in law and in practice that women are paid a salary equal to that of their male counterparts for the same type of work.

Right to health

- Strengthen universal access to health-care services, including sexual and reproductive health services, particularly for new-borns and children and improving services for maternal health, for new-borns and for children;
- Provide life skills-based education and incorporating sexual education into school curricula;
- Continue to request technical assistance and financial support to improve education services, to redraft the Kingdom's Constitution, and its activities in the promotion of human rights.

Education

- Establish a monitoring and reporting system on the implementation of the education policy framework;
- Create a monitoring system for the implementation of the current education policy framework for the period 2004–2019.

B. Rights of specific persons or groups

Women

- Accept the request for a visit of the Working Group on the issue of discrimination against women in law and in practice;
- Amend the Land Act currently in effect, particularly its provision preventing women from inheriting land;
- Explore synergies in mainstreaming women's rights and empowerment while implementing the 2030 Agenda for Sustainable Development;
- Continue to promote its ambitious goals in education and improve the ratio of women in leading positions in the country;
- Take specific measures to increase the representation of women at the decision-making level, including within the Legislative Assembly and expediting the adoption



of the necessary laws on increasing women's representation in the legislature and other decision-making bodies through temporary special measure;

- Introduce more targeted programmes to take into account the specific needs of women belonging to marginalized and vulnerable groups, such as rural women and women with disabilities;
- Enact laws to protect women in employment from any form of discrimination;
- Implement an official support system for working women, contemplating basic issues such as the minimum wage and maternity leave;
- Pursue its efforts in order to curb the violence against women such as the launch of a centre providing free legal advice and support to survivors of domestic violence;
- Systematically and continuously integrate a gender perspective in the follow-up process to the review.

Children

- Reinforce legal mechanisms for the protection of the child;
- Amend as a matter of priority, the marriage law, including raising the marriage age to 18 and declaring marriage below the minimum legal age as void ab initio, meaning that it should have no legal basis under any pretext, be it custom, religion, or traditional practice;
- Increase the existing range of punishments and fines for all parties involved in performing or abetting the performance of child marriages so they are commensurate with the seriousness of the offence;
- Recognize child marriage as a form of child labour, explicitly criminalizing child labour within the domestic sphere under laws related to children; and continue public campaigns such as "Let Girls be Girls", in collaboration with civil society, relevant government ministries and religious leaders.

Persons with disabilities

- Pay increased attention to persons with disabilities and their related needs;
- Strengthen the legal and policy framework related to improving the access of persons with disabilities to health, education, employment, public places, transport and information;