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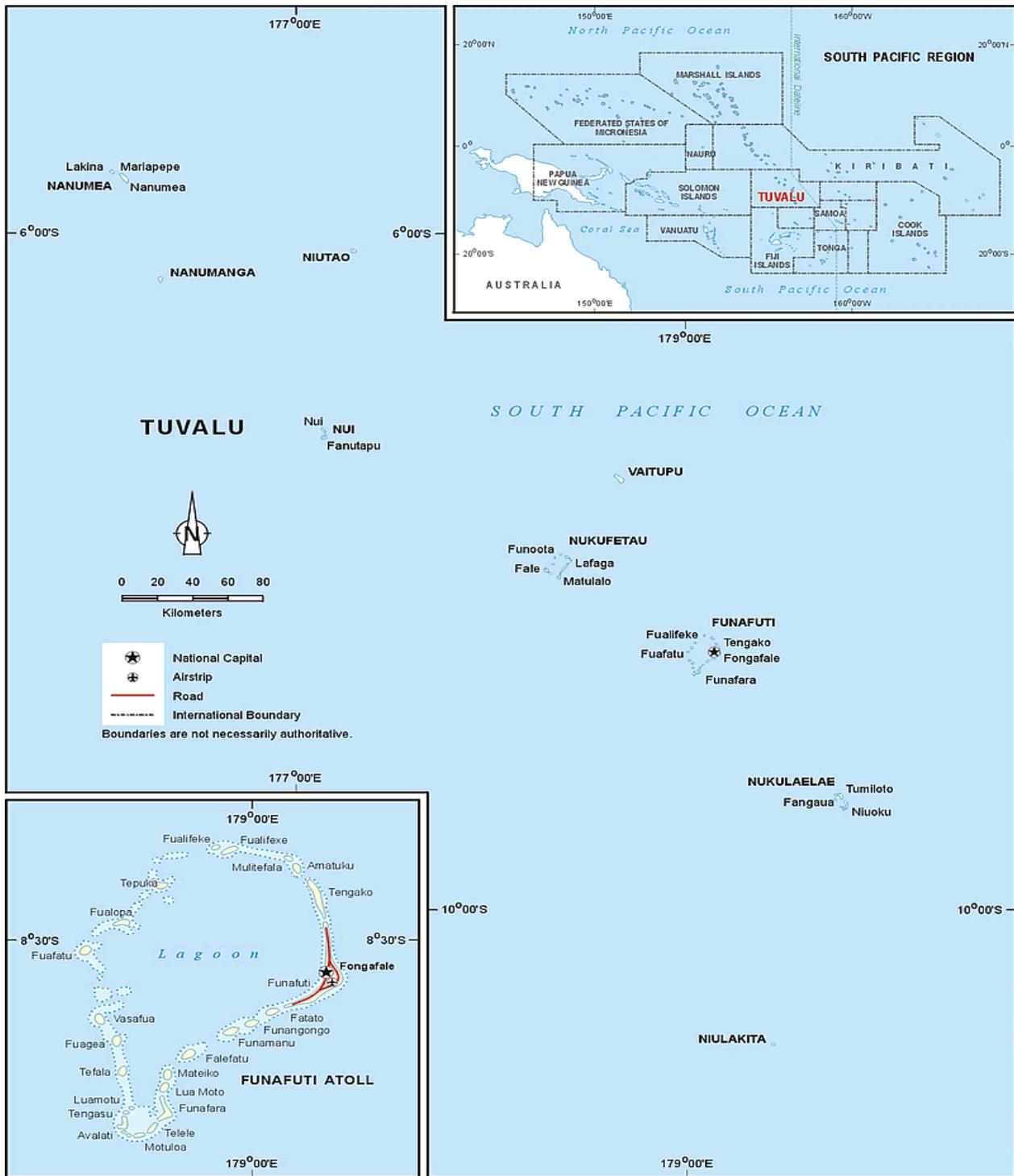
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\* In accordance with the information transmitted to States parties regarding the processing of their reports, the present document was not edited.

## Contents

| <i>Chapter</i>   | <i>Paragraphs</i> | <i>Page</i> |
|--|-------------------|-------------|
| Map of Tuvalu.....   |                   | 3           |
| I. General information about the reporting State .....   | 1–81              | 4           |
| A. Demographic, economic, social and cultural characteristics of the State .....   | 1–33              | 4           |
| B. Constitutional, political and legal structure of the State .....  | 34–81             | 11          |
| II. General framework for the protection and promotion of human rights.....  | 82–155            | 23          |
| A. Acceptance of international human rights norms.....   | 82–94             | 23          |
| B. Legal framework for the protection of human rights at the national level.....   | 95–129            | 26          |
| C. Framework within which human rights are promoted at the national level ....   | 130–147           | 33          |
| D. Reporting process at the national level .....   | 148–155           | 37          |
| <br>Tables   |                   |             |
| 1. Result of Mini Rural Population Census (May 2011 – March 2012) .....  |                   | 7           |
| 2. Maternal Mortality Ratio reduce by three quarters, between 1990 and 2015 .  |                   | 8           |
| 3. No. of Representatives from each Electoral District.....  |                   | 16          |
| 4. Female to male ratios in selected field of studies for new pre-service scholarships,<br>(average) 2003-2005 and 2007-2009 ..... |                   | 17          |
| 5. Women’s Representation in Parliament 1978 – 2010.....   |                   | 18          |
| 6. Senior Positions held by Men and Women (2009 – 2012) .....  |                   | 19          |
| 7. Membership of Statutory Boards .....  |                   | 20          |
| 8. Representation of Women on Government Boards and Committees 2009 – 2012   |                   | 20          |
| 9. NGO Boards and Committees 2009 – 2012.....  |                   | 23          |

# Map of Tuvalu



Source: MDG Report Tuvalu (Progress Report 2010/2011)

## **I. General information about the reporting State**

### **A. Demographic, economic, social and cultural characteristics of the State**

#### **1. Historical Background**

1. Tuvalu, formerly known as the Ellice Islands, was first settled by people of Polynesian ethnicity about 2000 years ago. It is generally believed that earlier ancestors came from Samoa by way of Tokelau, while others came from Tonga and Uvea (Wallis & Futuna).<sup>1</sup> Whilst linguistic studies have indicated that the language is about 2000 years old, the traditional stories and genealogies, however mostly go back 300 years indicating that the traditional culture of the islands today came not from earlier ancestors but from those who arrived later.

2. The island is located in the Pacific Ocean midway between Hawaii and Australia. Its nearest neighbours are Kiribati to the north, Samoa to south east and Fiji immediately to the south. The island, Ellice was named after a 19th century English politician, Edward Ellice, an MP for Coventry and owner of the ship Rebecca in which captain Arent De Pryster discovered Funafuti atoll in 1819. He named Funafuti in Ellice's honour, and this name was later applied to the whole group by English hydrographer, A. G. Findlay (Pacific Year Book 16<sup>th</sup> Edition).

3. The islands came under Britain's sphere of influence in the late 19th century. The Ellice Islands were administered by Britain as part of a protectorate from 1892 to 1916 and as part of the Gilbert and Ellice Islands Colony from 1916 to 1974.<sup>2</sup> In 1974 the Ellice Islanders voted for separate British dependency status as Tuvalu. It eventually became independent on 1 October 1978 and accorded a nonvoting 'special membership' status in the Commonwealth. Tuvalu's application for full Commonwealth membership was approved on 1st September, 2000 and also became a member of the United Nations in the same year. Tuvalu is known to be the smallest member by population of the United Nations.<sup>3</sup> The name Tuvalu which literally means eight islands standing together was adopted during independence.<sup>4</sup>

#### **2. The Land**

4. Tuvalu is one of the smallest and remotest island states in the Pacific and one of the smallest in the world. It consists of four reef islands and five atolls scattered over 1.2 million square kilometres of the Pacific Ocean, spreading in a north south direction over some 560 kilometres between latitudes 5 and 11 degrees south and over longitudes 176 and 180 degrees east. The total land area of the country is approximately 25.6 square kilometres, which is relatively evenly distributed across the nine atolls. Most of the atolls range in sizes from 2.4 to 4.9 square kilometres, except for the smaller islands of Niutao, Nukulaelae and Niulakita. The highest point is about five metres above sea level. The geographical composition of this island nation makes it very vulnerable to environmental issues such as coastal erosion and rising sea level.

5. Due to the limited availability of land, the soil is generally of low quality with poor fertility and therefore, there is low capacity to support agriculture. Agricultural production is limited, with coconuts, pandanus, breadfruit and bananas being the main tree crops.

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<sup>1</sup> A Brief History of Tuvalu <http://www.tuvaluislands.com/history.htm>

<sup>2</sup> *ibid*

<sup>3</sup> Country Background Note, UNDP RABP Cluster Meeting – 15 to 16 November, 2006

<sup>4</sup> Chambers & Chambers, 2001

Pulaka<sup>5</sup> and talo pits are also constructed to allow the traditional cultivation of root crops. However, traditional subsistence agricultural activities are declining as the economy becomes more monetarised.<sup>6</sup>

6. The climate is characterised by a consistently uniform temperature ranging from 26°C to 32°C, with high humidity and an average rainfall of 256.5 millimetres per month. Droughts of up to three months can occur especially in the northernmost islands. Some of the islands lie within the cyclone belt which makes them vulnerable to such natural disasters.

7. However, Tuvalu has a vast Exclusive Economic Zone (EEZ) of almost 900,000 square kilometres. Tuvalu's fish stocks in the Exclusive Economic Zone (EEZ), lagoons and inshore waters are its most valuable resource. Tuvalu's EEZ covers approximately 900,000 square kilometres with oceanic fish stocks offering potential for foreign and local based fishing fleets. The maintenance of lagoon fish stocks for local consumption is an important issue. Fishing is an important household subsistence and commercial activity in the outer islands and in Funafuti as well.

### 3. The People, Language, Custom and Tradition

8. The people are of Polynesian ethnicity with the local language closely related to that spoken in Samoa and Tonga, except the islanders of Nui who speak the Kiribati language. According to linguistic studies<sup>7</sup> there are three distinct linguistic areas in Tuvalu. The first area includes Nanumea, Niutao and Nanumanga. The second is Nui and the third group comprises Vaitupu, Nukufetau, Funafuti and Nukulaelae. Tuvaluan is the main language with English as the *official mode* in the Tuvalu Public Service. Both languages are spoken and taught in schools throughout the country.

9. Tuvaluans highly value their cultural heritages and identities. They live in communities on each island, where the social structures evolve around the leadership of either an 'Alik'i' or 'Pule Fenua'. The Alik'i inherits the title from his paternal lineage while the Pule Fenua is elected by the people. He must be a person of integrity and high moral standing within the community and should be capable of leading the community in its pursuit for socio economic development. As far as decision making is concerned, the Alik'i or Pule Fenua is assisted and supported by the head of each clan in the community. The hierarchy includes older men and women who in most cases are over 50 years old and they make up the Assembly of Elders which is also known as the Falekaupule Assembly. The Falekaupule or the traditional meeting house is where important decisions for development are made, and is structured and set in such a way where the head of each clan has a designated seat. The Falekaupule meeting enables the men to deliberate on issues that concern the welfare of everyone in the community, especially women and children particularly girls who are believed to be weak and thus need protection within the community.

10. Land is very important and valuable to Tuvaluans and ownership is based on communal family grouping called 'Kaitasi'. Tuvalu, being a patriarchal society, allows land to be inherited through the male lineage. Land may be passed to a daughter only if there are no sons, or she is the only child or the only surviving one. Daughters are protected and treated with respect in their families, and are expected to move into the husbands' family once they are married and their children will be included in their fathers' clan and have access to his land. Tuvaluans have developed a cultural system that enables them to live

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<sup>5</sup> Pulaka – traditional root crop

<sup>6</sup> Tuvalu MDG Report, 2004

<sup>7</sup> Tuvalu History

within the limited resources they have. They expect individuals to subordinate personal aspiration to family and community needs, thus the culture is also characterised by sharing and co-operating (Tisdell, 2000).

11. The Preamble in the Constitution also acknowledges and further emphasises in Section 29 that Tuvalu as an independent State is based on Christian principles, Tuvaluan values, culture and tradition. The key values include traditional forms of communities, and the support and discipline of the family. In guiding Government and social affairs, values like agreement, courtesy and search for consensus in accordance with traditional procedures are sought after and not those that are confrontational and divisive. Under the *Leadership Code Act 2007*, every leader must recognise that the stability of Tuvaluan society and the happiness and welfare of the people of Tuvalu, both present and future, depend largely on the maintenance of Tuvaluan values, customs and tradition. There have been no reported violations of the Act in 2008.

#### 4. Religion

12. Religion plays an important role in the life of Tuvaluans and cultural changes have occurred since the arrival of Christianity. Christianity first arrived in Tuvalu in 1861 when a Christian convert from the London Missionary Society (LMS) based in the Cook Islands accidentally drifted to Nukulaelae Island on a canoe. In 1865 Rev. A W Murray of the LMS in Samoa visited Tuvalu and installed Samoan pastors on these islands. These pastors were soon exercising considerable sway; the new faith was adopted and aspects of island life that did not conform to it were abandoned.<sup>8</sup> The faith has extended to all the other islands and is practised and observed in the islands today. Religious rules and morals imposed by Christianity also set regulations on men and women's behaviour and revised concepts of the family structure and marriage, setting in place gender relations.<sup>9</sup> At present, about 90 per cent of the population are members of this faith which is now known as Ekalesia Kelisiano o Tuvalu (EKT) derived from the Congregationalist Foundation of the LMS. The EKT also has a very strong influence on the life and well being of the people. The remaining 10 per cent of the population belong to other Christian denominations; Roman Catholic; the Assemblies of God Church; the Brethren Church; Seventh Day Adventists; Jehovah's Witness and other faiths like Muslim and Bahai.<sup>10</sup>

13. Reportedly, local governing authorities on the outer islands (comprised of statutory bodies and customary authorities) are generally less supportive of individual freedom of belief and expression. The People's Lawyer's Office has received numerous complaints from religious organizations concerned with limitations on their religious activities in the outer islands.

14. Discrimination on grounds of belief is being tolerated in many communities, particularly on the outer islands. The Government is taking urgent steps toward condemnation of all forms of discrimination, and providing support towards raising awareness among the public on human rights issues.

15. From the information available, there appears to be a need to explore appropriate arrangements to accommodate traditional and customary practices within the culture of Tuvalu as recognized in the Constitution while ensuring support of individual freedom of belief and expression.

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<sup>8</sup> Pacific Year Book 16th Edition

<sup>9</sup> Griffen V , 2006 Gender Relations in the Pacific cultures and their impact on the growth and development of children

<sup>10</sup> Tuvalu Census Report 2002

## 5. Population

16. The total population of Tuvalu enumerated by the 2002 census was 9,561. This represents an increase of only 518 people since 1991. The population generally increased since 2003. During mid-year 2007, it recorded the highest with 11,176 and by the end of 2007 it was at peak with 11,261. During mid-year 2010, the population was estimated to be 11,062 and at the end of the year it reached 11,145.<sup>11</sup>

17. The growth and decline in population depends on the fertility rate, mortality rate, and migration. Fertility basically contributes to population growth and mortality to population decline. Migration however can contribute to both depending on the direction and extent of the migration flow.<sup>12</sup>

18. The Ministry of Home Affairs undertook a Mini Rural Population Census which included the population size from May 2011 – March 2012 around the islands of Tuvalu. According to the results of the census, the total population of the nine islands is 9,626 (**Table 1**).<sup>13</sup> The population differs from island to island. According to findings, the decline in the population size may be a result of the increase in the mortality rate and also due to migration as more and more people migrate to other countries each year such as New Zealand and Australia.

Table 1

### Result of Mini Rural Population Census (May 2011 – March 2012)

| <i>Island</i> | <i>Male</i> | <i>Female</i> | <i>Total</i> |
|---------------|-------------|---------------|--------------|
| Nanumea       | 272         | 255           | 527          |
| Nanumaga      | 244         | 220           | 464          |
| Niutao        | 317         | 325           | 642          |
| Nui           | 336         | 336           | 672          |
| Vaitupu       | 584         | 520           | 1104         |
| Nukufetau     | 280         | 288           | 568          |
| Funafuti      | 2701        | 2573          | 5274         |
| Nukulaelae    | 156         | 178           | 334          |
| Niulakita     | 22          | 19            | 41           |
| Total         | 4912        | 4714          | 9626         |

(Source: Ministry of Home Affairs – Official Records 2011)

19. The above table reveals that the population size from the period May 2011 – March 2012 declined compared to the population size during the last 2 years (2007 & 2010). The decline in population may be a result of the increase in the mortality rate and particularly migration to New Zealand for better opportunities and other related purposes.

## 6. Maternal Mortality

20. The International Conference on Population and Development (ICPD) Programme of Action states that countries with intermediate levels of mortality should aim to achieve by the year 2015 a maternal mortality rate below 60 per 100,000 live births.<sup>14</sup> Between

<sup>11</sup> Biannual Statistical Report, 2011

<sup>12</sup> Population and Housing Census, Vol 2 – Demographic Profile, 1991 – 2002

<sup>13</sup> Ministry of Home Affairs – office records 2011

<sup>14</sup> Tuvalu Millennium Development Goals, Progress Report 2010/2011.

1990 and 2009, Tuvalu has an MMR of 65 per 100,000 live births (3 maternal deaths from 4,567 live births). Tuvalu is likely to meet the ICPD PoA target.<sup>15</sup>

21. According to the MDG progress report in 2006 and data from the Ministry of Health, Tuvalu had three maternal deaths (1990, 2003 and 2006) between 1990 and 2009.<sup>16</sup> The detection of risky pregnancies and the increase of trained midwives contribute to very low maternal deaths. Reproductive health programs such as screening mothers for hepatitis, anaemia, sexually transmitted diseases, HIV/AIDS and monitoring of mothers in antenatal and post natal clinics also contribute to the success.<sup>17</sup>

22. Medical service and medical clinics provided by the Princess Margaret Hospital in Tuvalu is free and therefore the proportion of all births attended by skilled health practitioners is high. The Demography and Health Survey 2007 shows that nationally, 98% of all live births have been attended by health practitioners.<sup>18</sup> Cases where delivery took place at home were due to the fact that there was no time to rush to the hospital at the time of delivery. Also a considerable number of deliveries also take place overseas for parents who seek better medical care.<sup>19</sup> Table 2 below shows the target score for maternal mortality ratio between 1990 and 2015.

Table 2

**Maternal Mortality Ratio reduce by three quarters, between 1990 and 2015**

**Target already met and not applicable**

| <i>Indicators</i>   | <i>1990</i>  | <i>1995</i> | <i>2003</i>           | <i>2005</i> | <i>2006</i>           | <i>2009</i> | <i>2015 Target</i>            |
|---|--|-------------|-----------------------|-------------|-----------------------|-------------|-------------------------------|
| Maternal mortality ratio (MMR)                            | 1 death in 242 births  | 0           | 1 death in 231 births | 0           | 1 death in 217 births | 0           | Achieve lowest possible level |
| Proportion of births attended by skilled health personnel | Not applicable as around 98% to 100% of births take place in hospital and are therefore attended by skilled health personnel |             |                       |             |                       |             |                               |

Source: Ministry of Health 2009

## 7. The Economy

23. Tuvalu has a very limited resource base which narrows down options available for development and is basically remote from major markets. It has a comparatively high cost of transportation for trade, a huge gap between exports and imports, thus relies on foreign aid and overseas remittances to bridge the gap.<sup>20</sup> Tuvalu is also vulnerable to external factors (mainly the exchange rate between the local currency of Australian Dollar against the US Dollar).

24. Tuvalu's overall economy is measured in Gross Domestic Product (GDP). GDP is a measure of the value of goods and services produced in a country. Due to the fact that Tuvalu relies heavily on foreign aid and overseas remittances rather than domestic

<sup>15</sup> *ibid*

<sup>16</sup> *ibid*

<sup>17</sup> *ibid*

<sup>18</sup> *ibid*

<sup>19</sup> *ibid*

<sup>19</sup> Tuvalu Millennium Development Goals, Progress Report 2010/2011.

<sup>20</sup> Tuvalu Millennium Development Goals, Progress Report 2010/2011

production,<sup>21</sup> Gross National Income is sometimes referred to as a more practical indicator than GDP. GNI is derived from GDP and it includes primary income earned by residents in Tuvalu and from abroad.

25. Between 1996 and 2002, the Tuvalu economy grew at a real rate of 7.3% per annum or 6.1% in per capita (head) terms.<sup>22</sup> Recent figures released by the Central Statistics Division and the International Monetary Fund in July 2009 show that the economy grew at a lower rate of 1.5% between 2001 and 2008. There are some years in which the growth rate of Tuvalu is relatively high while in others it is low. In 2002, real GDP growth rate was 6.7% but in 2003 the growth rate came down to 3.2%. Even though 2009 and 2010 Gross Domestic Product (GDP) figures are not available, the Asian Development Bank estimates that (taking into account the recent global economic crisis) the 2009 and 2010 real growth rate is not more than 1.0%.<sup>23</sup>

26. Bonus revenue from fishing licenses resulted in a high level of annual growth in 1998 with 19.7%. This is also seen in Kiribati where they also had the highest annual growth of 20% in 1998 because of buoyant revenue from fishing licenses (Kiribati MDG National Report 2007). The same circumstances arose between 2000 and 2002, when fishing licenses combined with dot TV revenue and the contribution from foreign reserves helped deliver an average annual growth rate of 4.3%. Therefore, the Government finances large public projects such as the Funafuti tarsealed road.<sup>24</sup> The public sector also continued to expand and because bank lending also increased, activities also increased in the private sector.

27. From 2003 to 2005, the economy slowed down to an average growth rate of -2.7%<sup>25</sup> due to the completion of some of the major projects such as the Government Building and the Princess Margaret Hospital. The economy had a positive annual growth rate of 3.1% between 2006 and 2008 due to the strong US Dollar and undertaking major projects such as the new Funafuti Power House (2007) and the Funafuti Wharf (2008).<sup>26</sup> The positive annual growth rate occurred despite the price increase in food and fuel. The annual inflation rate in the last quarter of 2008 was 10.4%. This is an increase of 6% from the average inflation rate of 3.4% between 1999 and 2007.<sup>27</sup>

28. In terms of income earned within the country and from overseas aid, the Gross National Income and Gross National Disposable Income (GNDI) doubled the Gross Domestic Product (total domestic activities in the country). GNDI derives from GNI and unlike GNI; it includes current transfers (payments or transfer of ownership e.g. overseas aid and private gifts).<sup>28</sup> Remittances from overseas come under GNI. The ratio between GDP versus GNI and GNDI shows that Tuvalu relies heavily on its foreign exchange revenue and donors' assistance. The sum of foreign receipts, less current transfer to the rest of the world, doubles the amount that Tuvalu can produce locally from economic activities in the country. Therefore the average proportion of GNDI to GDP is 1.9 (between 2001 and 2008) with the highest ratio of 2.2 in 2002.<sup>29</sup> The main contributing factors to this increase are fishing licenses and marketing of Tuvalu internet domain name, dot TV.

<sup>21</sup> *ibid*

<sup>22</sup> *ibid*

<sup>23</sup> *ibid*

<sup>24</sup> Tuvalu Millennium Development Goals, Progress Report 2010/2011.

<sup>25</sup> *ibid*

<sup>26</sup> *ibid*

<sup>27</sup> *ibid*

<sup>28</sup> System of National Accounts 1993, UNSD

<sup>29</sup> Tuvalu Millennium Development Goals, Progress Report 2010/2011.

29. Between 2002 and 2007, the average annual trade deficit was equivalent to 54.6% with the highest in the year 2002 of -70.1%.<sup>30</sup> Exports represent an average 1% of the value of imports within the same reference period.<sup>31</sup> The country's main export product has been copra but because of the decline in the world price for copra there is a minimum volume of exports, despite Government subsidy.

30. The Household Income and Expenditure Survey data in 2004/05 recorded a total number of people with formal employment of 1,673 which represent 33.5% of the total population of 15 years and above.<sup>32</sup> Thus this is an increase of 0.3% from 2002 to 2004/05. The 2002 Population Census data showed that the public sector, which includes both the public service and public enterprises, provided 37% of all employees in the country, followed by construction industries (22%) and business (20%).<sup>33</sup> Despite the public sector providing substantial employment opportunities, it has an adverse effect in crowding out the private sector, thus prevents the country's long term growth. The large public sector also undertakes jobs that could be undertaken by private businesses. Public reform studies have concluded that some of the public sector activities are not Government or public sector businesses. Even evidence has pointed to substantial over employment in the public sector with pay far exceeding their value.<sup>34</sup>

31. The public service total wage bill for 2009 was estimated to be around 25.7% of GDP.<sup>35</sup> This large proportion of the public sector wage bill may lead to being at the expense of the provision of basic services and therefore leads to the decline in social welfare status of the disadvantage, especially in the Outer Islands.<sup>36</sup>

#### **8. Tuvalu Trust Fund (TTF) and Falekaupule Trust Fund (FTF)**

32. The Tuvalu Trust Fund, established in 1987, is an essential component of the country's financial landscape. At the end of September 2008, both the total market value and the maintained value stood at AUD\$95 million and AUD\$109 million respectively. The current global economic crisis has affected the performance of the Fund. The international agreement setting up the Tuvalu Trust Fund (TTF) was signed on 16 June 1987, but the Fund itself was established some two months later on 21 August 1987, with an initial value of AUD\$27.1 million. New Zealand, Australia and Britain, collectively contributed just under AUD\$25 million, while Tuvalu invested about AUD\$1.6 million. Japan and South Korea made modest contributions. The striking success in the performance of the Fund led to the establishment of the *Falekaupule* Trust Funds (FTF) for each of the main eight islands.

33. The FTFs were designed to underwrite the costs of island local governments, encourage decentralisation, enhance capacity, and achieve a significant level of development finance for island communities.<sup>37</sup>

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<sup>30</sup> Central Statistics Division Statistical Report 2008 and National Account Report 2009.

<sup>31</sup> Tuvalu Millennium Development Goals, Progress Report 2010/2011.

<sup>32</sup> *ibid*

<sup>33</sup> *ibid*

<sup>34</sup> Tuvalu 2006 Economic Report, Asian Development Bank

<sup>35</sup> Tuvalu Millennium Development Goals, Progress Report 2010/2011.

<sup>36</sup> *ibid*

<sup>37</sup> T Tamaki, 'Stresses of governance in Tuvalu' (unpublished).

## B. Constitutional, political and legal structure of the State

### 1. Political and Legal Framework

34. Tuvalu has a modified Westminster system of ministerial government, governed by a written constitution.<sup>38</sup> The Prime Minister and the Speaker are elected by a 15-member Parliament and there are no organised political parties. Whoever commands the support of the majority of the members of Parliament will form and lead the government of the day. The other remaining members of Parliament will then join the other side known as the 'Opposition'. The Political structure of Tuvalu has developed over Parliamentary Conventions and practices. Individual qualities, personal and community relationships are the main determinants in elections. Island issues dominate parliamentary debate. The political system itself encourages parochialism over national interest as Members of Parliament (MPs) are elected for the islands rather than at a national level.<sup>39</sup>

35. The Constitution is the Supreme law of the land. It is followed by Acts of the Parliament, English common law and equity, Pre-Independence British Imperial Act before 1961 and customary laws of Tuvalu are all parts of the laws of Tuvalu. Customary law is normally used in the determination of titles to land, civil and criminal proceeding in Magistrate's court, provided that these customs are not repugnant to natural justice, equity and conscience or not inconsistent with any Acts. Customary law is also applied in civil and criminal proceedings in all courts except if it is inconsistent with the *Constitution* or any Acts.

36. The normative framework for the protection of human rights consists of the Constitution of Tuvalu, Acts of Parliament, court decisions or jurisprudence and customs and traditional practices.

### 2. Sources of Law

37. As declared by the Laws of Tuvalu Act 1987, there are five sources of law in Tuvalu: the Constitution which is the supreme law of the land, Acts of Parliament, Customary Law, Applied Laws and the Common Law. Customary law is recognised and enforced by, and may be pleaded in, all courts except so far as in a particular case or in a particular context its recognition or enforcement would result, in the opinion of the court, in injustice or would not be in the public interest. In addition, international laws also apply in Tuvalu subject to certain requirements. For instance if Tuvalu is a party to a particular international law the courts usually take into consideration the fact that it has been implemented into the local context. The fact that it does not contradict any other laws or its recognition in the opinion of the court does not create an injustice is also usually taken into account.

### 3. The Constitution

38. The Constitution of the Sovereign State of Tuvalu was adopted on 25 July, 1978 and came into force on 1 October, 1978 when the State obtained independence from Great Britain. In 1986 Parliament passed a new Constitution for Tuvalu. The Constitution is the supreme law of the country. All other laws are subject to the Constitution. Schedule 1, *Rules for the Interpretation of the Constitution*, provides a guideline for the interpretation of the Constitution. Section 4(3) states that the Constitution shall be interpreted and applied

<sup>38</sup> The Constitution of Tuvalu 1986.

<sup>39</sup> T Taafaki, 'Tuvalu' (unpublished draft paper presented for publication by the School of Political Science, Victoria University of Wellington, Wellington, 2009).

in such a way so as to promote fair and democratic Government consistent with Tuvaluan values. The Constitution ensures that fundamental human rights and freedoms are upheld with traditional Tuvaluan values. Para 5 of the Preamble states that;

“AND WHEREAS the people of Tuvalu desire to constitute themselves as an independent State based on Christian principles, the Rule of Law, and Tuvaluan custom and tradition.”

39. The Constitution may be amended by an Act of Parliament but requires the support of two third majorities of all Members of Parliament at its final reading. There have been three reviews of the Tuvaluan Constitution.<sup>40</sup> The Constitutional Review Committee of Parliament completed the third review in 2000.

40. The *Laws of Tuvalu Act 1987* defines Tuvalu customary law and focuses on such matters as land and fishing rights, legitimacy and adoption of children, divorce and community responsibilities (Jalal 1998).

#### 4. Government System

41. *The Executive* – The Executive branch includes the British Monarch as Head of State represented by the Governor General who is appointed on the advice of the Prime Minister in consultation with the Cabinet. Cabinet is appointed by the Governor General on the recommendation of the Prime Minister who is chosen by the elected members of Parliament. The current Cabinet comprises the Prime Minister, Deputy Prime Minister and four Ministers. The Prime Minister and the Deputy Prime Minister are elected by the Members of Parliament. The Attorney General,<sup>41</sup> the principal legal adviser to the Government, in accordance with s.79 of the Constitution and Rule 50 of the Rules of Procedure, attends Cabinet and all sittings of Parliament and its committees, is allowed to take part in proceedings but is not entitled to vote. The Secretary to Government<sup>42</sup> who is responsible for co-ordinating the work of Ministries and offices of Government also attends all Cabinet meetings unless excused by the Prime Minister. The power to summon, prorogue or dissolve Parliament rests with the Governor General on the advice of the Prime Minister.

42. *The Legislature* – The Tuvalu Parliament is elected on the basis of universal suffrage consisting of a single chamber of 15 members. Seven islands elect two members each while Nukulaelae which has the smallest population elects only one member. The Speaker presides at all sittings of Parliament and of committees of Parliament unless the Rules or Act of Parliament provides otherwise. Provision is also made in the Constitution and the Rules of Procedure for election of an Acting Speaker. The normal life of Parliament is four years and in accordance with the Constitution, Parliament makes laws for Tuvalu. The power to make laws by Parliament shall be exercised through means of Bills passed by Parliament and assented to by the Head of State. A Bill that has been assented to is an Act of Parliament.<sup>43</sup>

43. *The Judiciary* - The judicial system consists of the Sovereign in Council, Court of Appeal and the High Court, which are courts of appellate jurisdiction whereas the High Court is also a general trial court. Other courts include the Senior Magistrates' Courts, Island Courts, and Land Courts which are lower courts with limited jurisdiction.<sup>44</sup>

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<sup>40</sup> USP, Corrin-Care, Newton & Paterson, 1999

<sup>41</sup> Appointed under Section 159 (4) (a) of the Constitution

<sup>42</sup> Appointed under Section 159(3)(a)

<sup>43</sup> Section 86 of the Constitution of Tuvalu

<sup>44</sup> Source: Tuvalu Basic Information

## 5. Hierarchy of Courts<sup>45</sup>

### (a) *The Sovereign in Council*

44. Under s.136 of the Constitution, an appeal may be made from a decision of the Court of Appeal to the Sovereign in Council. The Council has jurisdiction to hear appeals from the decisions of the Court of Appeal with leave of the Court of Appeal, in the following matters:

cases referred to in s.136(1) (a) of the Constitution, being:

- (a) a final decision on a question as to interpretation or application of the Constitution;
- (b) a final decision in proceedings for the enforcement of the fundamental rights provisions in Part II of the Constitution;
- (c) a final or interlocutory decision in any case which the Court of Appeal considers involving a question of great general or public importance or which ought to be submitted to the Privy Council.

### (b) *Court of Appeal*

45. Established under s.134 of the Constitution of Tuvalu. It has jurisdiction to hear civil appeals as of right from the High Court exercising any type of jurisdiction, except:

- (a) Where an order was made by consent or is as to costs only;
- (b) Where an order or judgment is interlocutory, except in a case prescribed by rules of court; in which case, leave is required.

No civil appeal is allowed from:

- (c) A decision allowing an extension of time in which to appeal;
- (d) An order giving unconditional leave to defend an action;
- (e) A decision of the High Court which is provided by statute to be final.
- (f) All criminal appeals lie as of right from decisions of the High Court to the Court of Appeal.<sup>46</sup>

### (c) *High Court*

46. The High Court is established under s.120 of the Constitution. It is constituted by the Chief Justice of Tuvalu and any other Judges appointed under s.123 of the Constitution. The High Court has:

- (a) Unlimited original jurisdiction in civil and criminal cases;
- (b) Jurisdiction to hear appeals as of right from all decisions of the Senior Magistrate's Court, other than orders made ex parte, by consent, or as to costs only. In those instances special leave of the court of first instance or appellate court is required;
- (c) Jurisdiction to hear appeals from the senior magistrate's court exercising appellate jurisdiction including decisions on appeal from the native land appeal panel;
- (d) Jurisdiction to decide a question of law referred to it by way of case stated from the Senior Magistrate's Court;

<sup>45</sup> Corrin-Care, Newton & Paterson, 1999 p 317 - 322

<sup>46</sup> Corrin-Care, Newton & Paterson, 1999 p 317 - 322

- (e) Supervisory jurisdiction over inferior courts.

The Chief Justice is appointed by the Public Service Commission on the recommendation of Cabinet. The Chief Justice travels to Funafuti twice a year to preside over sessions of the High Court.

(d) *Magistrates Court*

47. Established under the Magistrate's Court Act.<sup>47</sup> It has jurisdiction to:

- (a) Hear civil cases involving up to \$10,000;
- (b) Make adoption orders;
- (c) Hear appeals from any other magistrates' court as of right in all civil and criminal matters, other than orders made ex-parte, by consent, or as to costs only. In those circumstances special leave of the court of first instance or appellate court is required;
- (d) Hear appeals from the Native Lands Appeal Panel on points of law only;
- (e) Hear appeals from Island Courts exercising divorce jurisdiction or jurisdiction in any civil matter where the amount involved exceeds \$10;
- (f) Review any civil or criminal island court case, either on the petition of a party or of its own motion.

48. The criminal jurisdiction of the Senior Magistrate's Court differs from that of the other magistrates' courts. All magistrates' courts have summary jurisdiction only. The senior magistrate's court may hear cases in the following circumstances:

- (a) Where the offence is one for which the maximum punishment does not exceed 14 years imprisonment, a fine or 'both such imprisonment and such fine';
- (b) Where jurisdiction has been expressly conferred upon the court or there has been express provision that the offence in question is one that may be tried summarily.

49. The maximum punishment that may be imposed by the senior magistrate's court is a term of imprisonment for five years, a fine of \$1,000 or 'both such imprisonment and such fine'. Other magistrates' courts have a more limited jurisdiction. They may hear cases in the following circumstances:

- (a) Where the offence is one for which the maximum punishment does not exceed imprisonment for more than one year, a fine of \$200 or both;
- (b) Where jurisdiction has been expressly conferred on the court or there has been express provision that the offence in question may be tried summarily.

The magistrate's courts exercise an appellate jurisdiction with regard to decisions of the island courts of the district within which the magistrates' court is situated.

(e) *Island Court*

50. On each island there is an Island Court which is subordinate to the Senior Magistrates Court.<sup>48</sup> An Island Court shall exercise jurisdiction within the limits of the

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<sup>47</sup> Established under s3 of the Magistrate's Court Act Cap 2

<sup>48</sup> Section 3 of the Island Courts Act (Cap 3)

island within which it is situated<sup>49</sup> and it shall have and exercise the jurisdiction in civil causes and criminal causes.<sup>50</sup> Furthermore, the Island Court also has jurisdiction to hear:

- (a) Petitions for divorce or associated proceedings under the Native Divorce Act provided both parties are domiciled in Tuvalu;
- (b) Claims in contract and tort where the amount involved does not exceed \$60;
- (c) Applications for maintenance under the Maintenance (Miscellaneous Provisions) Act; and
- (d) Applications under the Custody of Children Act.

51. Criminal causes that come within the criminal jurisdiction of the island courts are set out in Schedule 2 of the Island Courts Act. In addition, the court may hear cases in relation to offences, the maximum punishment for which is a fine of \$100 and/or a period of imprisonment of six months.<sup>51</sup>

(f) *Lands Court*

52. There is a Lands Court on each island established under Section 6 of the Native Lands Act (Cap 22), comprised of 6 magistrates. The Lands Court is responsible for all matters pertaining to land, namely, land leases, wills, inheritance, adoption, etc.

## 6. The Judiciary and Fair Trial Rights

53. Tuvalu is committed to the rule of law and administration of justice among those who take refuge under the law. The Constitution guarantees the protection of the people by the law and equality of everyone before the law. Among some of these protection include, a person charged with an offence should be given fair hearing within reasonable time by an independent and impartial court of law. Such person charged with an offence is presumed innocent until proven guilty. The person should also be informed in the language they understand well, and should be given adequate time to defend himself.

## 7. Access to justice

54. The main restraint facing access to justice in Tuvalu is the lack of human resources and institutional capacity. It is important that this challenge is addressed. For instance, the availability of qualified lawyers at the Office of the People's Lawyer and other government and public offices is a matter which requires urgent attention. From January 2007 to September 2007, there were no lawyers at the Office of the People's Lawyer.<sup>52</sup> However for a small number of cases where the Attorney General's Office was able to assist, the population of Tuvalu was without access to legal advice and representation throughout this period. Over 100 criminal matters were adjourned during this time due to lack of defence counsel. Upon the arrival of an expatriate People's Lawyer in September 2007, a significant backlog of cases had accrued in the upper court jurisdictions.

## 8. Electoral System

55. Every Tuvaluan citizen, regardless of sex, and who is not disqualified under s.92 of the Constitution is entitled to vote in all elections of Parliament.<sup>53</sup> However, that person

<sup>49</sup> Section 4 of the Islands Court Act (Cap 3)

<sup>50</sup> Section 5(1) Island Courts Act (Cap 3)

<sup>51</sup> USP, Corrin-Care, Newton & Paterson, 1999

<sup>52</sup> Office of the People's Lawyer – Office Records 2007

<sup>53</sup> *Tuvalu Constitution s. 90 - 92*

must be registered in an electoral district in order to exercise his or her right to vote. Therefore, even if a person is qualified to vote but did not register during the registration period for a particular election, that person forfeits his or her right to vote.<sup>54</sup> The grounds for disqualification under s.92 equally apply to any citizen regardless of sex.

56. The Constitution also makes provisions for elections of Members of Parliament. Section 87 provides for the nature of elections which states:

“(1) Members of Parliament shall be elected under a system of universal, citizen, adult suffrage, in accordance with this Constitution and any law made for the purposes of s.8 (electoral laws).

(2) All contested elections of members of Parliament shall be held by secret ballot.

(3) The provisions of subsection (2) shall not be considered to be contravened by a law that makes reasonable provision for assistance in voting to be given, on request, to any person.”

57. In addition, s.90 (1) states the right to vote as:

“Subject to the succeeding provisions of this section, any person who is registered under an Act of Parliament as an elector for Parliamentary elections in an electoral district is entitled to vote, in such manner as is prescribed, in an election of a member of Parliament for that district.”

58. Tuvalu’s electoral system is first past the post system (single member plurality). This system was adopted from the colonial era and has survived since Independence in 1978. Tuvalu does not have political parties. The *Electoral Provisions (Parliament) Act* 1980 divides Tuvalu into eight electoral districts as set out in Schedule to the Act, in alphabetical order as follows;

Table 3  
**No. of Representatives from each Electoral District**

| <i>Electoral</i>  | <i>Area</i>       | <i>No. of Representatives</i> |
|-------------------|-------------------|-------------------------------|
| Funafuti District | Funafuti Island   | 2                             |
| Nanumanga         | Nanumanga Island  | 2                             |
| Nanumea           | Nanumea Island    | 2                             |
| Nui               | Nui Island        | 2                             |
| Niutao            | Niutao Island     | 2                             |
| Nukufetau         | Nukufetau Island  | 2                             |
| Nukulaelae        | Nukulaelae Island | 1                             |
| Vaitupu           | Vaitupu Island    | 2                             |

59. Moreover, s.5 of the Act states that any person who is a citizen of Tuvalu can be registered as an elector on reaching the age of 18 years and be registered on the electoral register of his or her home island. The Act also provides a number of criteria to determine a person’s home island which includes birth in that electoral district or that his mother or father (giving both parents equality of rights) was born in that electoral district.<sup>55</sup>

60. Apparently, the Constitution and electoral laws provide equal opportunities for women and men to contest in elections. Despite the legislative provisions for equal

<sup>54</sup> Electoral Provisions (Parliament) Act 1980 s. 5

<sup>55</sup> Section 5(3) of the Electoral Provisions (Parliament) Act 1980.

participation, in reality there are obstacles which preclude women from contesting in elections.

## 9. Gender disparity by fields of study

61. Although Tuvalu's gender disparity improved in all levels of education, gender disparity still exists by fields of study. That is men are still dominant in the fields of engineering, construction and information technology.<sup>56</sup> However there are signs of change, average data from number of new pre service scholarships between 2003-2005 and 2007-2009 shows female to male ratios for business and finance, law, management and administration have all improved, ranging from 0.67 to 1.72 (see table below 3A.1). For the same period, women are still dominating in the field of health (in particular nurses) and education service.<sup>57</sup>

Table 4

### Female to male ratios in selected field of studies for new pre-service scholarships, (average) 2003-2005 and 2007-2009

| <i>Field of Study</i>                         | <i>2003-2005</i> | <i>2007-2009</i> |
|---|------------------|------------------|
| Business and Finance                          | 0.78             | 2.50             |
| Engineering                                   | 0.05             | 0.00             |
| Information Technology                        | 0.50             | 0.20             |
| Construction                                  | 0.01             | 0.00             |
| Education                                     | 4.00             | 3.33             |
| Medical and health related (including nurses) | 4.67             | 9.00             |
| Law   | 0.67             | 1.33             |
| Management and Administration                 | 2.17             | 4.00             |
| Mathematics                                   | 1.50             | 1.00             |

Source: Central Statistics Division and Ministry of Education

## 10. Women in wage employment

62. Similar to other Pacific countries, the traditional and stereotype perception is that women are only responsible for domestic duties. Official figures from the population census and household surveys indicate that there was an increasing trend from 36.4% in 1991 to 41.6% in 2004 that fell back to 36.0% in 2007.<sup>58</sup> One of the reasons for the decline is the growing number of males in employment, especially due to the number of large construction related projects in recent years (2006-2008) and the compulsory seamen's TNPF contributions (2008).

63. The female average income is reasonably similar to that of men for the same period (1999-2008). On average between 1999 and 2008, female income as a percentage of male income is 103%. Even though in 2007 and 2008 the share of women in wage employment in the non-agricultural sector fell from 36% to 28%, female income as percentage of male income fell only 10% below male earnings. This shows that most of the men in

<sup>56</sup> Tuvalu Millennium Development Goals, Progress Report 2010/2011.

<sup>57</sup> *ibid*

<sup>58</sup> Tuvalu Millennium Development Goals, Progress Report 2010/2011.

construction projects have low pay on average compared to female pay in other non-agricultural sectors.<sup>59</sup>

## 11. Barriers to Participation of Women in Politics

64. While the laws provide equal opportunities for men and women, in practice women would still need to overcome cultural barriers in contesting for elections. Such barriers include:

(a) The traditional and stereotype perceptions of women's priority roles confine them to the home as home maker, care giver and nurturer of the family. Men on the other hand, do not have those confinements. They are expected to take part or to be at the forefront of decision making in the Falekaupule, Kaupule and island communities. Hence, their contesting in elections and going into Parliament is a natural transition for them.

(b) Convincing the husband and family members to support her political participation requires great efforts.

(c) Financial constraints are also another barrier. Women do not normally have sufficient financial resources readily available for campaigning. In reality, the more money a candidate has the more votes she gets to win.

(d) The nature of voting also contributes to the marginalisation of women. In Tuvalu, voting is mainly based on relational and family lines rather than on the merits of candidates. The situation is exacerbated by the absence of political parties which would have been a tool for affirmative action through allocation of safe seats to women.

(e) Election candidates often work individually or in some cases partner with a fellow candidate who is likely to be a close relative from within the same constituency. Such practices also discourage women from contesting given the very minimal number who stand for elections.

Table 5  
**Women's Representation in Parliament 1978 – 2010**

| <i>Year</i> | <i>Male</i> | <i>Female</i> | <i>Total</i> |
|-------------|-------------|---------------|--------------|
| 1978 – 1981 | 12          | 0             | 12           |
| 1982 – 1985 | 12          | 0             | 12           |
| 1986 – 1989 | 14          | 1             | 15           |
| 1990 – 1993 | 14          | 1             | 15           |
| 1994 – 1997 | 15          | 0             | 15           |
| 1998 – 2001 | 15          | 0             | 15           |
| 2002 – 2005 | 15          | 0             | 15           |
| 2006 – 2009 | 15          | 0             | 15           |
| 2010 – 2014 | 14          | 1             | 15           |

(Source – Parliament Office Records, Tuvalu)

65. The above table shows that from the year 1986 – 1993 there was only one female Parliamentarian. Ms Naama Maheu Latasi was elected as a Member of Parliament representing the Nanumea constituency. She was able to get into Parliament through her

<sup>59</sup> *ibid*

extensive involvement with development issues for her constituency and the advancement of Tuvaluan women and also from the support of her husband and her family. Ms Latasi served two consecutive terms in Parliament and during her first term in office, she was appointed as the Minister of Health, Education and Community Services.<sup>60</sup>

66. Since then, no other woman was voted into Parliament until the sudden death of one of the Members of Parliament who was then Minister for Natural Resources, the late Hon. Isaia Taeaia Italeli in 2011. Following his unexpected death, a bye – election for the Nui constituency was held in which two candidates contested one of which was the late Hon. Minister’s wife. She won the bye – election and joined her late husband’s political alliance in which she was appointed as the Minister of Home Affairs. Thus, at present there is one female Parliamentarian within the political arena of Tuvalu.

## 12. Decision Making in Government

67. There are 41 Senior Positions within the Public Service of Tuvalu which includes Permanent Secretaries, Senior Assistant Secretaries, Assistant Secretaries and Directors. It can be seen from Table 6 below that men dominate the senior positions within the Government. From 2009 to the present, women occupy 9 senior positions including 2 Permanent Secretaries, 1 Senior Assistant Secretary, 3 Assistant Secretaries and 3 Directors as shown in the table below:

Table 6  
**Senior Positions held by Men and Women (2009 – 2012)**

| <i>Position</i>              | <i>Male</i> | <i>Female</i> | <i>Total</i> |
|------------------------------|-------------|---------------|--------------|
| Permanent Secretaries        | 13          | 2             | 15           |
| Senior Assistant Secretaries | 4           | 1             | 5            |
| Assistant Secretaries        | 5           | 3             | 8            |
| Directors                    | 10          | 3             | 13           |

(Personnel and Training Department, Tuvalu – Official Records)

## 13. Public Enterprises (Performance and Accountability) Act

68. The Public Enterprises (Performance and Accountability) Act 2009 provides for the improvement of the performance of Public Enterprises; specify the principles and procedure for the appointment of Directors of Public Enterprises and other related matters concerning the operation of Public Enterprises.

69. For each Public Enterprise, there is a Board of Directors established to oversee the functions of the entities. Table 7 below shows the membership of each board from the year 2009 – 2012. The Table below reveals that men dominate most of the Public Enterprises as members of boards. There are also certain entities such as the National Bank of Tuvalu, Price Control Board, Tuvalu Electrical Cooperation and others in which women are not members of boards.

70. One of the Public Enterprises, Tuvalu Media Corporation has been decorporated and therefore it is no longer cooperation and is now known as the Tuvalu Media Department. The other Public Enterprise, National Fishing Corporation of Tuvalu was to be decorporated as well, however it has not been formally decorporated but the members of its board had been sacked from their positions.

<sup>60</sup> Kofe & Taomia In PIFS 2006 ‘A Woman’s Place is in the House – the House of Parliament

Table 7  
**Membership of Statutory Boards**

| <i>Statutory Boards</i>                  | <i>Yr 2009/2010</i> |   | <i>Yr 2010/2011</i> |   | <i>Yr 2012</i> |   |
|--|---------------------|---|---------------------|---|----------------|---|
|  | F                   | M | F                   | M | F              | M |
| Development Bank of Tuvalu Board         | 1                   | 5 | 1                   | 3 | 3              | 2 |
| National Bank of Tuvalu Board            | none                | 5 | none                | 3 | none           | 5 |
| Price Control Board                      | none                | 3 | none                | 3 | none           | 3 |
| Tuvalu Electrical Cooperation Board      | none                | 4 | 1                   | 2 | 1              | 4 |
| Tuvalu Maritime Training Institute Board | 2                   | 3 | 2                   | 3 | none           | 5 |
| Tuvalu National Provident Fund           | 2                   | 2 | 1                   | 3 | 1              | 3 |
| Tuvalu Philatelic Bureau Board           | 1                   | 4 | none                | 4 | 1              | 4 |
| Tuvalu Telecommunications Board          | 1                   | 4 | 1                   | 4 | none           | 5 |
| Vaiaku Lagi Hotel Board                  | 1                   | 3 | none                | 3 | 3              | 2 |

(Source: Ministry of Finance, Tuvalu – Official Records)

71. Although there is a low representation of women on these boards, however vacancies for membership are normally advertised and selection is based on merit with the designated Minister making the appointment. There is evidence of qualified women but do not show interest for such appointments. This may be a clear indication that women may not have the time for additional responsibilities or they may have undermined their own capabilities to serve on these boards. Through the years, women have also been members of government boards and committees. Despite the low representation of women in other entities, committees and or organisations, they are often part of the whole system of government which is proved by their visibility within the public service.

72. Table 8 below shows the representation of women on government boards and committees from the year 2009 – 2012. The table shows that women's representation on government boards and committees is progressing from 2009 – 2012 compared to the past years. This type of trend is evidence that women are beginning to be more involved in the formal sector and to be part of the decision making process in formal institutions and other decision making bodies.

Table 8  
**Representation of Women on Government Boards and Committees 2009 – 2012**

| <i>Boards and Committees</i>                   | <i>Yr 2009</i> |    | <i>Yr 2010</i> |    | <i>Yr 2011/2012</i> |    |
|--|----------------|----|----------------|----|---------------------|----|
|  | F              | M  | F              | M  | F                   | M  |
| Public Service Commission                      | 1              | 3  | 1              | 3  | none                | 4  |
| Development Coordinating Committee             | 3              | 17 | 3              | 17 | 3                   | 17 |
| Tuvalu National Commission for UNESCO          | 5              | 2  | 5              | 2  | 5                   | 2  |
| Millennium Development Goals Task Force        | 11             | 8  | 11             | 8  | 11                  | 8  |
| CEDAW & Gender National Coordinating Committee | 13             | 6  | 13             | 6  | 13                  | 6  |
| Disaster Coordinating Committee                | 4              | 15 | 4              | 15 | 4                   | 15 |

(Source: Department of Women Affairs, Tuvalu – Office Records)

73. Proper training and education at all levels is an important key factor to encourage and build up the confidence in women to be part of and participate more in formal decision making. Therefore government in trying to provide equal opportunities for both men and women would have to consider developing an Equal Employment Opportunity Policy to improve this process.

#### 14. Local Government

74. The Assembly of Elders and the Falekaupule Assembly are set up in accordance with the traditional local customs and norms, the 'Tuu mo Aganuu' of each island. Each island has its own Falekaupule (*Traditional Meeting House – Island Decision-making Entity*) which is governed by the Falekaupule Act. In the area of authority of each Falekaupule, there is a local government council or Kaupule. The Kaupule performs all the executive functions of the Falekaupule.

75. In 1978, Parliament passed a Local Government Act based on the Local Government Ordinance of 1966. The Local Government Act 1978 was repealed by the 1997 Falekaupule Act. As a result, every local government council established by the 1978 Act was disbanded and replaced by a Kaupule.<sup>61</sup> The Falekaupule Assembly elects the President of the Kaupule, known as the 'Pule o Kaupule'. The 'Pule o Kaupule, is tasked with the approval of the island budget which is usually sourced from the Falekaupule Trust Fund, the by-laws, and appointments of Kaupule officers. The role of the Falekaupule, through the Kaupule, is to 'maintain order and good governance and promote development within its own area of 'authority.' In collaboration with the Government Department of Rural Development, the Falekaupule through the Kaupule, prepares and implements development plans in conjunction with the community and other relevant parties, co-ordinating and monitoring development projects, mobilising the people for development efforts, and ensuring the proper management and use of the natural resources in the Falekaupule area.

76. Each Kaupule consists of six members who are elected by registered voters. Candidates for election to a Kaupule cannot be public officers. Members are elected for a four year term and can seek re-election, but can only serve two consecutive terms.

77. The Falekaupule Act 1997 further gives recognition to traditional governance (chiefs and elders) where the chiefs and elders are directly responsible for managing island affairs with the traditional governance system working collaboratively with the National Government. Both the National Government and the Local Government aimed at improving linkages between cultural systems, government and national-level institutions and encourage wider participation of communities on their own development.

#### 15. Non Governmental Organisations

78. The Incorporation of Non – Governmental Organisations Act 2007 regulates the formation and incorporation of non – governmental organizations in Tuvalu for any lawful purpose but not for pecuniary gain or profit and for other connected purposes.<sup>62</sup> Section 3 of the Act provides for the incorporation of an association or organization for any lawful purpose but not for pecuniary gain or profit may make an application to the Registrar in accordance with the Act.<sup>63</sup> Section 8 of the Incorporation of Non – Governmental Organizations Act provides that there should be a registered office of an NGO at a physical place to which all communications may be addressed.<sup>64</sup> Section 9 provides for the

<sup>61</sup> UNDP, Tuvalu Legislative Needs Assessment Country visit Mission Report, 2000

<sup>62</sup> Incorporation of Non-Governmental Organizations Act 2007

<sup>63</sup> Incorporation of Non-Governmental Organizations Act 2007

<sup>64</sup> *ibid*

registering of members of an NGO in which there shall be a register that contains the names and addresses of the members and the dates at which they became members or ceased to be members.<sup>65</sup> Section 10 in particular provides for the application for incorporating an NGO which should be made to the Registrar with certain requirements under this specified section. Upon satisfaction of the Registrar that the requirements of the Act have been met, then the NGO may be registered following the procedure as set out in section 11 of the Act.<sup>66</sup> After being duly registered, section 12 provides that a certificate of incorporation should be issued to the NGO under the seal of the Registrar and is regarded as conclusive evidence that all statutory requirements regarding registration have been complied with, and therefore the NGO is authorised to be registered and has been registered accordingly under the Act.<sup>67</sup>

79. Although there is a low representation of women in governmental and public boards, they largely dominate NGOs such as TNCW, TANGO, TuFHA, Church Organisations, and Women in Business and Island Women's Organisations. One of the remarkable achievements of TNCW was the successful lobbying for the establishment of the DWA in 1999 and the formulation of the first Tuvalu National Women's Policy. Government being mindful of its limitation supports the work of these NGOs by providing an allocation of \$10,000 annually to cater for their administration costs. Other development programmes pursued by these NGOs are normally financed from outside sources. In partnership with Government, TNCW has been promoting the participation of women in all areas of national development through leadership training and micro enterprise development. These NGOs are members of Government committees within their areas of expertise; hence they are an integral part of policy making processes in Government.

80. In comparison to Government, women in NGOs actively participate at regional and international meetings and conferences. Established NGOs such as TANGO, TuFHA, Red Cross, and TNCW are headed by women. These women usually represent their respective organizations and Tuvalu at international meetings in their areas of work. Such meetings include International Planned Parenthood Federation (IPPF), International Red Cross to name a few and have from time to time participated as part of Tuvalu's delegation at international meetings such as the World Summit on Sustainable Development (WSSD), United Nations General Assembly and UNIFEM. Women in NGOs also participate in the activities of regional and international organizations through projects. TANGO coordinates with development partners such as European Union (EU), Foundation for the South Pacific International (FSPI), and internationally recognized voluntary organization like the British Voluntary Service Organization (VSO) and Australia Volunteers International (AVI).

81. As stated earlier, women outnumber men in senior executive positions within the NGO arena. Table 9 below shows that, NGO boards and committees, there is a higher presence of women largely due to the inclusion of the TNCW<sup>68</sup> which is predominantly occupied by women. Most of these NGOs are involved in the promotion of the social well being of Tuvaluans.

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<sup>65</sup> *ibid*

<sup>66</sup> *ibid*

<sup>67</sup> *ibid*

<sup>68</sup> Tuvalu National Council of Women

Table 9  
**NGO Boards and Committees 2009 – 2012**

|   | <i>Male</i> | <i>Female</i> | <i>Total</i> |
|---|-------------|---------------|--------------|
| Island Care Committee   | 3           | 2             | 5            |
| TANGO Executive Committee   | 4           | 4             | 8            |
| Waste Management Committee  | 6           | 0             | 6            |
| Project Working Committee   | 4           | 16            | 20           |
| Project Coordination Committee  | 3           | 20            | 23           |
| TuFHA Board of Directors  | 5           | 5             | 10           |
| Ekalesia Kelisiano Tuvalu Committee (Church Organisation)             | 11          | 1             | 12           |
| Tuvalu National Council of Women                                      |             |               |              |
| Red Cross   | 4           | 5             | 9            |
| Tuvalu Association of Sports and National Olympic Executive Committee | 3           | 2             | 5            |

(Source: Department of Women Affairs, Tuvalu – Office Records)

## **II. General framework for the protection and promotion of human rights**

### **A. Acceptance of international human rights norms**

#### **1. Protection of Fundamental Human Rights**

82. The Bill of Rights<sup>69</sup> provides for the protection of the basic fundamental human rights of the individual. These rights are extensive and cover the right not to be deprived of life and personal liberty; security; the protection of the law; freedom of belief; freedom of expression; freedom of assembly and association; protection for the privacy of home and property; and protection from unjust deprivation of property.

83. However, the anti-discrimination provisions of the Tuvalu Constitution fail to recognise freedom from discrimination against sex. Therefore, a number of laws still discriminate against women in Tuvalu, e.g., laws relating to inheritance of land, adoption of children, marriage, custody of children, or domestic violence. There are calls on the Government to review all relevant laws which discriminate negatively on women. These claims include the demand to change policies and practices which perpetuate the discrimination and marginalisation of women, so as to bring them into line with international human rights standards.

84. At the international level, Tuvalu is neither a party to the International Covenant on Civil and Political rights (ICCPR),<sup>70</sup> nor the International Covenant on Economic, Social and Cultural Rights (ICESCR).<sup>71</sup> It has, however, ratified the Convention on the Rights of

<sup>69</sup> The Constitution of Tuvalu 1986

<sup>70</sup> International Covenant on Civil and Political Rights, opened for signature 16 December, 999 UNTS 171 1966, (entered into force 23 March 1976)

<sup>71</sup> International Covenant on Economic, Social and Cultural Rights, opened for signature 16 December 1966, 993 UNTS 3 (entered into force 3 January 1976).

the Child (CRC),<sup>72</sup> on 22 September 1995 and the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW),<sup>73</sup> on 6 October 1999.

85. Tuvalu has been asked by other international bodies, including the Legal Literacy Project (Tuvalu National Council of Women) to consider the ratification of ICCPR and ICESCR, and in addition to these two Conventions, to accede to the other core human rights treaties, as well as putting into effect the necessary domestic legislations.<sup>74</sup>

86. There are some inconsistencies between Tuvalu's international obligations under the treaties that it has signed and ratified and the domestic laws. The Tuvalu High Court has indicated that where there are inconsistencies between the two, the domestic law will apply until Tuvalu's international obligations are reflected in the domestic laws through the appropriate parliamentary process. The delay to incorporate obligations from international treaties into domestic laws means that there may be people who may have not been treated fairly.<sup>75</sup>

## **2. Violence against Women**

87. Violence against women in Tuvalu is an issue many of which are unreported. It constitutes an alarming threat to the rights and dignity of women.<sup>76</sup> The 2007 Demographic and Health Survey reported that four in 10 women have been subjected to some type of physical violence, with their current husbands or partners being the main perpetrators (84.6%).<sup>77</sup> In particular, wives whose husbands drink alcohol excessively are far more likely (72%) to experience physical, emotional, or sexual violence than those whose partner does not drink (27%). It is estimated that around half of all reported acts of physical violence were reported by women aged 25-29.<sup>78</sup>

88. The Demographic and Health Survey also shows that domestic violence against women does not have a link with place of residence (Funafuti or Outer Islands), employment status, marital status, educational level or the woman's number of children. The occurrence of such violence is visible throughout Tuvalu which underlines the importance of strong Government leadership and whole of community involvement to tackle this problem effectively.<sup>79</sup>

## **3. International commitments**

89. Tuvalu adheres to the Charter of the United Nations and the Universal Declaration of Human Rights. It has therefore ratified two international human rights treaties: The Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) and the Convention on the Rights of the Child (CRC).

90. International treaties ratified by Tuvalu are accordingly incorporated into domestic laws. However, there are serious issues of capacity in Tuvalu to fulfil the requirements of

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<sup>72</sup> Convention on the Rights of the Child opened for signature 20 November 1989, 1577 UNTS 530 (entered into force 2 September 1990).

<sup>73</sup> Convention on the Elimination of All Forms of Discrimination against Women opened for signature 18 December 1979, 1249 UNTS 13 (entered into force 3 September 1981).

<sup>74</sup> 15 United Nations Human Rights Council, Summary Prepared by the Office of the High Commissioner for Human Rights in Accordance With Paragraph 15(c) of the Annex to Human Rights Council Resolution 5/1 – Tuvalu, (2008) UNHCR

<sup>75</sup> *ibid*

<sup>76</sup> Tuvalu Millennium Development Goals, Progress Report 2010/2011.

<sup>77</sup> *ibid*

<sup>78</sup> *ibid*

<sup>79</sup> Tuvalu Millennium Development Goals, Progress Report 2010/2011.

international treaties, and to ensure consistency of domestic laws. Where the construction of a written law is open to more than one interpretation, an interpretation which is consistent with Tuvalu's international obligations will be preferred.

91. There is no human rights institution in Tuvalu and there is a hope that the international community will consider providing technical assistance in this area. Tuvalu became a member of the Commonwealth in 2000, immediately following its joining the United Nations. Tuvalu is also a founding member of the Pacific Islands Forum Secretariat and a member to several regional organizations such as the Secretariat of the Pacific Community (SPC), Secretariat of the Pacific Regional Environmental Programme (SPREP), and Secretariat of the Pacific Geoscience Commission (SOPAC).

#### 4. International Commitments on Women and Gender

92. The Government of Tuvalu became a member of the United Nations in 2000 and was accorded the status of a Least Developed Country. The state has also acceded to regional and international conventions guaranteeing women's rights and human rights. Key issues addressed by being party to the following include:

- (a) The Pacific Platform for Action 1993;
- (b) Jakarta Declaration for the Advancement of Women in Asia and the Pacific 1994;
- (c) Beijing Platform for Action 1995;
- (d) Ratified CEDAW with any reservation 1999;
- (e) Participated in the Beijing +5 processes 2000;
- (f) Endorsed the Commonwealth Plan of Action for Gender Equality 2005 – 2015 (7<sup>th</sup> Women Affairs Ministers' Meeting, Nadi, Fiji) 2004;
- (g) Endorsed the Revised Pacific Platform of Action after the Third Pacific Women's Ministers' meeting and the 9<sup>th</sup> Triennial Conference of Pacific Women. 2004;
- (h) Commitment to Beijing +10 2005;
- (i) The Pacific Plan 2005;
- (j) The Government has also ratified the Convention on the Rights of the Child (CRC) and endorsed the MDGs. Tuvalu has also submitted its report on the implementation of the MDGs to the United Nations General Assembly in 2005.

#### 5. Ratification of CEDAW

93. Government in its commitment to improve the status of women in Tuvalu ratified the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) without any reservation in October 1999. This was the result of consistent lobbying and advocacy by the national women's machinery. With regards to international obligations, Section 17 of the *Interpretation and General Provisions Act*, (Cap 1A) stipulates that ...

“A construction of a written law which is consistent with the international obligations of Tuvalu is to be preferred to a construction which is not.”

94. Therefore there is a need to adopt CEDAW into the national laws. The need to incorporate CEDAW into the laws of Tuvalu has been implemented very recently in 2011 through the Family Protection and Domestic Violence Bill 2011. The Bill has been submitted to Cabinet for consideration and has called for an outer islands consultation

before finalising its decision. The outer islands consultation aims at ensuring that the general population is informed of the content of the Bill.

## **B. Legal framework for the protection of human rights at the national level**

### **1. The rights referred to in the various human rights instruments protected either in the constitution, a bill of rights, a basic law, or other national legislation and the provisions made for derogations, restrictions or limitations and in what circumstances**

95. The Tuvalu Constitution provides for the fundamental human rights and freedoms of the citizens of Tuvalu. Every person in Tuvalu is entitled, whatever his race, place of origin, political opinions, colour, religious beliefs or lack of religious beliefs, or sex, to the following fundamental rights and freedoms:- the right not to be deprived of life ; personal liberty; security for his person; the protection of the law; freedom of belief ; freedom of expression; freedom of assembly and association; protection for the privacy of his home and other property ; protection from unjust deprivation of property. Of notable absence in the freedom from discrimination provisions is any protection from discrimination on the basis of gender.

96. The Tuvalu Constitution also places limitation on certain fundamental rights and freedoms. Section 15 of the Constitution states that reasonably justifiable in a democratic society notwithstanding anything to the contrary, other than (a) section 33 (hostile disciplined forces); and (b) section 36 (restrictions on certain rights and freedoms during public emergencies), all laws, and all acts done under a law, must be reasonably justifiable in a democratic society that has a proper respect for human rights and dignity.

97. Furthermore, any question whether a law is reasonably justifiable in a democratic society that has a proper respect for human rights and dignity is to be determined in the light of the circumstances existing at the time when the decision on the question is made. A law may be declared not to be reasonably justifiable in a democratic society that has a proper respect for human rights and dignity only by the High Court or some other court prescribed for the purpose by or under an Act of Parliament.

98. In determining whether a law or act is reasonably justifiable in a democratic society that has a proper respect for human rights and dignity, a court may have regard to- (a) traditional standards, values and practices, as well as previous laws and judicial decisions, of Tuvalu; and (b) law, practices and judicial decisions of other countries that the court reasonably regards as democratic; and (c) international conventions, declarations, recommendations and judicial decisions concerning human rights; and (d) any other matters that the court thinks relevant.

99. Further, the anti-discrimination provisions of the Tuvalu Constitution fail to recognise freedom from discrimination against sex or gender. As a result, a number of laws still discriminate against women in Tuvalu, e.g., laws relating to inheritance of land, adoption of children, marriage, custody of children, or domestic violence. There are calls on the Government to review all relevant laws which discriminate negatively on women. These claims include the demand to change policies and practices which perpetuate the discrimination and marginalisation of women, so as to bring them into line with international human rights standards.

100. Limitations on specific rights and freedoms are set out in the Bill of Rights. Generally, fundamental rights and freedoms must be exercised with respect for the rights and freedoms of others and the national interest, and in acceptance of and respect for Tuvaluan values and culture (s. 11(2)). Freedom of belief, expression, assembly and

association are explicitly subject to restriction if their exercise may be divisive, unsettling or offensive to the people, or may directly threaten Tuvaluan values or culture (s. 23-25, 29). The Bill of Rights also provides that all laws, and all acts done under a law, must be reasonably justifiable in a democratic society that has a proper respect for human rights and dignity. A determination in this respect may consider traditional standards, values and practices, the laws of Tuvalu and other democratic countries, and international conventions, declarations, recommendations and judicial decisions on human rights<sup>80</sup>.

101. At the international level, Tuvalu is neither a party to the International Covenant on Civil and Political Rights (ICCPR), nor the International Covenant on Economic, Social and Cultural Rights (ICESCR). It has, however, ratified the Convention on the Rights of the Child (CRC)<sup>81</sup> and the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW)<sup>82</sup>. There are some inconsistencies between Tuvalu's international obligations under the treaties that it has signed and ratified and the domestic laws. The Tuvalu High Court has indicated that where there are inconsistencies between the two, the domestic law will apply until Tuvalu's international obligations are reflected in the domestic laws through the appropriate parliamentary process. The delay to incorporate obligations from international treaties into domestic laws means that there may be people who may have not been treated fairly<sup>83</sup>.

## 2. Human rights treaties incorporated into the national legal system

102. There are also examples of domestic legislation which operate human rights in a specific field. The Education Ordinance, for instance, provide pupils with the right not to take part in religious education or ceremonies (section 19) at a public school. The Criminal Procedure Code sets out various protections against arbitrary arrest and intrusion into one's private home. The Native Lands Act (essentially a codification of customary land laws) provides individuals with the right to not arbitrarily deprived of their family land inheritance. The Constitution provides individuals with specific fundamental rights and freedoms such as the right to personal liberty, the right not to be deprived of life, freedom of assembly and association, freedom of belief and the protection of the law and other fundamental rights and freedoms. Voting rights are also provided for under the Constitution.

103. Although Tuvalu is not a party to other human rights treaties<sup>84</sup> the Government is still committed to ensure effective monitoring of human rights situation on the ground and to meet the targets outlined in the Te Kakeega II, The National Strategy on Sustainable Development.

104. Tuvalu is a party to the Convention relating to the Status of Refugees (by succession), the Geneva Conventions<sup>85</sup>, the Convention on the Rights of the Child (CRC)<sup>86</sup> and the Convention on the Elimination of All Forms of Discrimination against Women

<sup>80</sup> CRC Report 2012

<sup>81</sup> 22 September 1995

<sup>82</sup> 6 October 1999

<sup>83</sup> PIFS Good Leadership Report 2011

<sup>84</sup> International Covenant on Civil and Political Rights, International Covenant on Economic, Social and Cultural Rights, Convention on the Elimination of All Forms of Racial Discrimination, Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, International Convention on the Protection of the Rights of All Migrant Workers and Their Families, International Convention for the Protection of All Persons from Enforced Disappearance.

<sup>85</sup> 1981

<sup>86</sup> 1995

(CEDAW)<sup>87</sup>. The accession process is carried out by the executive branch of government, without confirmation in domestic law. These human rights instruments may be made part of the national legal system through the passage of domestic legislation incorporating the principles and rights therein and harmonizing existing laws with international commitments. As has been confirmed by the High Court, the provisions of human rights conventions cannot be enforced prior to transformation into internal laws or administrative regulations. The terms of a convention may be invoked for the purposes of statutory interpretation, which favours a construction of written law consistent with international obligations. This may effectively alter the way in which existing laws are applied, if ambiguous. The terms of a convention may also be considered in a proceeding to determine if a law is reasonably justified in a democratic society under the Bill of Rights, as noted above<sup>88</sup>.

**3. Judicial, administrative or other authorities with competence affecting human rights matters and the extent of such competence**

105. The Court of Appeal is established under section 134 of the Constitution and has the power to determine appeals from decisions of the High Court, whether in the exercise of original jurisdiction or in the exercise of appellate jurisdiction as provided for in section 135 of the Constitution.<sup>89</sup> The High Court in particular has jurisdiction to enforce the Bill of Rights as provided for in part II (Bill of Rights) of the Constitution, to determine questions as to membership of Parliament (section 100 of Constitution) and also to determine questions regarding the interpretation or application of the Constitution (section 131).<sup>90</sup> It also has the appellate jurisdiction to determine appeals generally as provided for in section 132 of the Constitution and other matters that relate to the effect of Parliamentary declarations (section 14(3) Constitution).<sup>91</sup> The Magistrates Court is established under section 3 of the Magistrates Courts Act and has jurisdiction over civil and criminal matters. The Chief Justice may by order authorise an extension of the Magistrates Court's jurisdiction in civil matters within the district prescribed in the order and also to the extent specified in the order, and such order may also be revoked at any time by the Chief Justice by an instrument under his hand and the seal of the High Court (s.24 Magistrates Courts Act).<sup>92</sup>

106. The *Leadership Code Act of 2007*, Section 37, stipulates the creation of the Ombudsman Commission. However, the Ombudsman Commission, empowered by law to enjoy independence from control or direction from any person or authority, is yet to be established. At present, no mechanism, apart from the courts, for independently investigating public complaints against government actions exists.

107. The Office of the Auditor-General is established under Section 170 of the Constitution. The Auditor-General is an independent office whose performance of his or her functions is protected by the Constitution. The Auditor-General reports directly to Parliament through the Office of the Speaker of Parliament. The *Audit Act 2007* established the Tuvalu National Audit Office (NAO) and sets out the functions and responsibilities of the Auditor-General and the NAO. Under its rules of procedures, Parliament's Accounts Committee meets from time to time to scrutinise the reports of the Auditor-General and report back to Parliament.

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<sup>87</sup> 1999

<sup>88</sup> CRC Report 2012.

<sup>89</sup> *The Constitution of Tuvalu 1986*

<sup>90</sup> *ibid*

<sup>91</sup> *ibid*

<sup>92</sup> *Magistrates Courts Act 1963*

108. The audit report on the 2008 annual accounts of the Government was being finalised in May 2009. This was a considerable improvement from the past when audit reports were delayed for a number of years. Part of the problem in the timely submission of audit reports is the delay in the time Treasury takes to finalise the annual accounts and produce completed annual financial statements for audit. The Government believes that the *Audit Act 2007* provides independent and sufficient ammunition for Parliament's chief watchdog on the public accounts to conduct its legal functions and, to some extent, covers a gap in the lack of an Ombudsman to 'police' the *Leadership Code Act 2007*.

**4. The provisions of the various human rights instruments, and their invocation before, or directly enforcement by, the courts, other tribunals or administrative authorities**

109. The Constitution also provides for the use of international conventions, declarations, recommendations and judicial decisions concerning human rights as one of the factors the Court may regard in determining whether the law or act is reasonably justifiable in a democratic society that has proper respect for human rights and dignity<sup>93</sup>.

110. To date Tuvalu has made significant progress in applying international norms and standards by the courts. This is evident in the few cases that have appeared before the judiciary applying international norms and standards. The High Court in Tuvalu have applied international norms and standards in:

- (a) *Mark Anderson v R* [2003] TVHC 27 (CRC);
- (b) *Teonea v Pule o Kaupule of Nanumaga* [2009] TVCA 2;
- (c) *Falefou v Esau* [2009] TVCA 1;
- (d) *R v Setaga* [2008] TVHC 3 (CRC);
- (e) *R v Teokila* [2008] TVHC 2 (CRC).

**5. Remedies available to an individual who claims that any of his or her rights have been violated, and systems of reparation, compensation and rehabilitation for victims**

111. The Privy Council has jurisdiction to hear appeals from the decisions of the Court of Appeal with leave of the Court of Appeal, cases referred to in s 136(1) (a) of the Constitution, being: (a) a final decision on a question as to interpretation or application of the Constitution; (b) a final decision in proceedings for the enforcement of the fundamental rights provisions in Part II of the Constitution; (c) a final or interlocutory decision in any case which the Court of Appeal considers to involve a question of great general or public importance or which ought to be submitted to the Privy Council. The Privy Council also has the jurisdiction to hear any civil case involving \$2,000 or more; or any proceedings for dissolution or nullity of marriage.

112. In the case of ***Teonea v Pule o Kaupule of Nanumaga* [2009] TVCA 2**, the Kaupule of Nanumaga appealed the decision of the Court of Appeal to the Privy Council which is the highest court in the hierarchy of courts in Tuvalu. The government of the day in trying to convince the Kaupule of Nanumaga to discontinue appealing the matter passed a law called the **Religious Organisations Restriction Act 2010**. The whole purpose of the Act was to restrict the spread of beliefs and practices by religious organizations and associations of persons in a manner which undermines the traditional authority of the

<sup>93</sup> S15 of the Constitution of Tuvalu

Falekaupule and the traditional values of island communities.<sup>94</sup> The Kaupule of Nanumaga discontinued their appeal after the Act was passed and came into force.

113. The Court of Appeal has jurisdiction to hear civil appeals as of right from the High Court exercising any type of jurisdiction, except: where an order was made by consent or is as to costs only; where an order or judgment is interlocutory, except in a case prescribed by rules of court in which case, leave is required. Furthermore, no civil appeal is allowed from: a decision allowing an extension of time in which to appeal; an order giving unconditional leave to defend an action; a decision of the High Court which is provided by statute to be final. All criminal appeals lie as of right from decisions of the High Court to the Court of Appeal.

114. In **R v Setaga**<sup>95</sup> the defendant was charged with two counts of defilement of a child under 13 years of age. The offences were alleged to have occurred twice on different dates in 2003, both of which involved the same victim who was then 7 years and 3 months old at the time. The defendant was 13 years and 8 months old. However the case was committed for trial at the High Court in 2008 in which the girl is 11 years and 9 months whilst the defendant is 18 years and 3 months.<sup>96</sup> The defendant in this case made an application to stay the case permanently on the ground that there has been such an unreasonable delay in bringing the matter before the Court that it violates the defendant's rights under the Convention on the Rights of the Child and amounts to an abuse of process.<sup>97</sup>

115. The court took into consideration the interests of the girl in this case that she also has a right to justice which means that the matter should be tried in court. However having heard the evidence of the defendant regarding the long delay, it concluded that the delay in the case was entirely in the hands of the police and if there is a significant risk of injustice, it will apply both to the defendant and the complainant but the defendant will be more at risk and whose liberty is also at stake. Therefore the court held that to proceed on with the trial where the ability of the defendant to put his defence is effectively impaired due to the failure of the prosecution would be a clear abuse of process. Thus the prosecution was stayed and marked not to proceed without the leave of the High Court or the Court of Appeal.<sup>98</sup>

116. The High Court has unlimited original jurisdiction in civil and criminal cases. It has jurisdiction to hear appeals as of right from all decisions of the senior magistrate's court, other than orders made ex parte, by consent, or as to costs only. In those instances special leave of the first instance or appellate court is required. The High Court is given jurisdiction to determine questions arising under the Bill of Rights, and is empowered to grant a wide range of remedies in order to enforce the protection of fundamental rights and freedoms. Constitutional redress (monetary compensation) is one remedy that may be sought by an individual aggrieved by an alleged violation of the Bill of Rights; where justified, the Court's order may also include administrative law remedies such as declarations or injunction orders.

117. The Islands Court have jurisdiction within the boundaries of the island on which they are established and over inland and adjacent waters. Within that area they have summary jurisdiction to deal with the following civil matters: petitions for divorce or associated proceedings under the Native Divorce Ordinance provided both parties are domiciled in Tuvalu; claims in contract and tort where the amount involved does not

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<sup>94</sup> *Religious Organisations Restriction Act 2010*

<sup>95</sup> [2008] TVHC 3

<sup>96</sup> *ibid*

<sup>97</sup> *ibid*

<sup>98</sup> *ibid*

exceed \$60; applications for maintenance under the Maintenance (Miscellaneous Provisions) Ordinance; and applications under the Custody of Children Ordinance. Criminal causes that come within the criminal jurisdiction of the island courts are set out in Schedule 2 of the Island Courts Act. In addition, the court may hear cases in relation to offences, the maximum punishment for which is a fine of \$100 and/or a period of imprisonment of six months

**6. Institutions or national machinery with responsibility for overseeing the implementation of human rights, including machinery for the advancement of women or intended to address the particular situations of children, the elderly, persons with disabilities, those belonging to minorities, indigenous peoples, refugees and internally displaced persons, migrant workers, non-authorized aliens, non-citizens or others, the mandate of such institutions, the human and financial resources available to them, and policies and mechanisms for gender mainstreaming and corrective measures**

118. The Tuvalu National Coordinating Committee is comprised of heads of departments representing each department within the government institution and also heads of nongovernmental institutions representing their own institutions. This includes the Director of Women's Affairs, Attorney General, Director of Health, Director of Education, Community Affairs Department (Social welfare) and other government departments. Nongovernmental organisations involve the Tuvalu National Council of Women Coordinator, Fusialofa Coordinator (disabled), Tuvalu Association of Nongovernmental Organisations Coordinator and other NGOs.

119. Directly or indirectly, each department within this Coordinating Committee contributes to the implementation of human rights. For instance, the Community Affairs Department looks after the welfare of the community especially that of children, the elderly, and women within the community who are mostly seen as the most vulnerable within society. Nongovernmental Organisations such as Fusialofa is where people with special needs are being looked after and educated including their rights within the community. Awareness programmes such as workshops are usually undertaken to raise more awareness to such group of people on their rights and other related matters that needs to be conveyed to them.

120. Tuvalu does not have a government agency, ombudsman or commission responsible for the oversight of human rights implementation. A regional human rights facility for Pacific Island countries is in the planning stages, as part of the Pacific Island Forum's Pacific Plan. Nationally, the Office of the People's Lawyer is mandated to provide legal services to Tuvaluans, and has represented applicants in proceedings for Constitutional redress to date. The National Advisory Committee for Children (NACC) has taken responsibility for coordination and reporting on children's rights.

121. The promotion of gender equality and the expansion of the role of women in development have been mainstreamed into all sectors in the National Development Strategic Plan. In particular the Department of Women deals mainly with gender issues and undertakes awareness programmes and consultations with island communities advocating on the issue of gender equality and the empowerment of women. Awareness programmes undertaken by the Women's Department are based on the needs of the community as what specific area they would want to be informed and educated on that certain issue. For instance, economic empowerment of women, political participation and other related issues that promote gender equality within the community.

122. Tuvaluans live in very close communities and in extended families. There have been no cases reported of children being neglected but there are rumours that some children are staying with relatives as a result of being neglected by their mothers and guardians.

Government believes strongly in the need to properly harmonise customary ways of upbringing children in conformity with the CRC and other human rights covenants.

123. Child sex offences are not adequately provided for in the Penal Code, particularly in the case of abuse of male children. Rape of a male child, for example, carries a significantly lesser maximum penalty than rape of a female child. Fortunately, such offences are a relatively rare occurrence in Tuvalu. However, law reform is clearly required in order to modernize Tuvalu's criminal laws in this area.

124. The National Advisory Committee for Children (NACC), formed by the government in 1998, has responsibility for cross-sector coordination and monitoring CRC implementation. The membership of NACC includes representatives from the Health Department, Tuvalu Association of Non-Government Organisations (TANGO), Tuvalu Red Cross, National Council of Women, Legal Literacy Project, Police Department, Attorney General's Office, Youth Department, Department of Women, Culture Department, Media Department, Planning and Budget Department, Education Department, Ekalesia Kelisiano Tuvalu (EKT) and Tuvalu Family Health Association (TuFHA). The Education Department has been responsible for coordinating input for the CRC report from all stakeholders since 2000. In early 2009 the terms of reference for NACC was developed and coordinated by the Cabinet. The lack of funding for NACC has delayed the effective coordination process.

125. The 2010 budget carries an allocation for NACC to enable it implement its mandated responsibilities for 2011. It is understood that NACC's allocation will appear annually in the relevant sections of the Government's recurrent budget.

**(a) Persons with disabilities – Fusialofa**

126. The law does not prohibit discrimination on the basis of physical, sensory, intellectual, or mental disability. There were no known reports of discrimination against persons with disabilities in employment, education, or the provision of other state services. However, supplementary state services to address the special needs of persons with disabilities were very limited. There are no mandated building accessibility provisions for persons with disabilities. Although the one multi-story government building had elevators, they were not operational, and there were no elevators in other multi-story buildings. Persons with disabilities had limited access to information and communications. The Fusi Alofa Association (Tuvalu National Disabled Persons Organization) and the Tuvalu Red Cross undertook regular home visits to persons with disabilities and conducted educational programs to raise community awareness of the rights of persons with disabilities and to advocate for such persons. The Fusi Alofa Association ran basic education classes in Funafuti for children with disabilities who were not able to attend school<sup>99</sup>.

127. The Community Affairs Department in the Ministry of Home Affairs and Rural Development is responsible for protecting the rights of persons with disabilities.

**(b) Internally displace persons and Refugees**

128. The law provides for freedom of movement within the country, foreign travel, emigration, and repatriation, and the government generally respected these rights in practice. The need did not arise during the year for government cooperation with the Office of the UN High Commissioner for Refugees and other humanitarian organizations in providing protection and assistance to internally displaced persons, refugees, returning refugees, asylum seekers, stateless persons, and other persons of concern. The constitution prohibits forced exile, and the government did not practice it.

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<sup>99</sup> <http://www.state.gov/j/drl/rls/hrrpt/2010/eap/154406.htm>

**7. Whether the State accepts the jurisdiction of any regional human rights court or other mechanism and, if so, the nature and progress of any recent or pending cases**

129. There are currently no existing regional human rights mechanisms in the Pacific. Tuvalu does not subscribe to any regional human rights court or mechanisms as there is none established in the Pacific region.

**C. Framework within which human rights are promoted at the national level**

**1. National and regional parliaments and assemblies: the role and activities of the national parliament and sub-national, regional, provincial or municipal assemblies or authorities in promoting and protecting human rights, including those contained in international human rights treaties**

**Parliament and human rights**

130. The parliament (*Te Fale o Palamene*) consists of 15 members that are popularly elected every four years from eight constituencies. There are no formal political parties. Tuvalu is a party to and has ratified two international human rights treaties – the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) and the Convention on the Rights of the Child (CRC). Tuvalu has not ratified ILO Convention No. 169 but it voted in favour of the United Nations Declaration on the Rights of Indigenous Peoples in 2007<sup>100</sup>.

131. The parliament of Tuvalu is largely responsible for the passing of laws in Tuvalu. To date members of parliament in Tuvalu have attended human rights training offered by the SPC/RRRT.

**2. National human rights institutions: any institutions created for the protection and promotion of human rights at the national level, including those with specific responsibilities with regard to gender equality for all, race relations and children's rights, their precise mandate, composition, financial resources and activities, and whether such institutions are independent**

132. The Government of Tuvalu believes it is important to set up as early as possible a national commission for human rights, and a human rights office in Tuvalu. The government of Tuvalu realizes the commitment made to the Human Rights Council through its national UPR Report and will progressively realise this commitment. The government of Tuvalu will in the future look towards establishing a national human rights institution after holding relevant consultations with relevant stakeholders.

**3. Dissemination of human rights instruments: the extent to which each of the international human rights instruments to which the State is party have been translated, published and disseminated within the country**

133. Both the Convention on the Rights of the Child and the Convention on the Elimination of All Forms of Discrimination against Women have been widely disseminated in Tuvalu. Both government and NGOs have been at the forefront of disseminating this information in Tuvalu. The Tuvalu National Council of Women and regional partners have

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<sup>100</sup> <http://www.iwgia.org/regions/oceaniapacific/tuvalu/900-update-2011-tuvalu>

provided information to the general public on women and children's issues. Government through the relevant line Ministries has also promoted both CRC and CEDAW.

**4. Raising human rights awareness among public officials and other professionals: any measures taken to ensure adequate education and training in human rights for those with responsibilities for the implementation of the law, such as Government officials, police, immigration officers, prosecutors, judges, lawyers, prison officers, members of the armed forces, border guards, as well as teachers, medical doctors, health workers and social workers**

134. Tuvalu has benefited from human rights awareness and training conducted by the Secretariat of the Pacific Community (SPC/RRRT) and other regional institutions. Government officials including lawyers, police officers, and magistrates have benefited from human rights tailored training by regional partners working in the Pacific region. The training provided has enabled lawyers and judges and magistrates alike to apply human rights norms and standards to their decisions. The human rights training provided aims at equipping government officials with information on human rights norms and standards to better their work. This has been provided for and supported by PIFS, SPC and other international organisations such as the Commonwealth Secretariat, Office of the High Commissioner for Human Rights etc.

**5. Promotion of human rights awareness through educational programmes and Government-sponsored public information: any measures taken to promote respect for human rights through education and training, including Government-sponsored public information campaigns; the extent of human rights education within schools, (public or private, secular or religious) at various levels**

135. There has been no implementation of awareness programs on the promotion of human rights specifically targeting schools. However there have been measures undertaken to promote human rights generally within the community through workshops, consultations and other awareness programs that help the public in general to be well informed on human rights related issues. Specifically the Tuvalu National Council of Women in conjunction with the Department of Women have been very active in implementing awareness programs such as workshops, consultations and trainings on human rights particularly on gender issues which targets women in society.

**6. Promotion of human rights awareness through the mass media: the role of the mass information media, such as the press, radio, television and Internet, in publicizing and disseminating information about human rights, including the international human rights instruments**

136. There have been promotions of human rights awareness programs undertaken through the media by the department of women and the SPC/RRRT Tuvalu Country Focal Officer on human rights related issues and to raise more awareness on such matters especially the issue of gender equality and the empowerment of women within society. An awareness program is broadcasted live on air and includes issues regarding the rights of the vulnerable groups, people with special needs, children, and women etc.

**7. Role of civil society, including non-governmental organizations: the extent of the participation of civil society, in particular non-governmental organizations, in the promotion and protection of human rights within the country, and the steps taken by the Government to encourage and promote the development of a civil society with a view to ensuring the promotion and protection of human rights**

137. There is no dedicated Human Rights body in Tuvalu. Tuvalu National Council of Women (TNCW)'s and the Office of the People's Lawyer receive the bulk of enquiries from the public relating to enforcement and protection of human rights. Training on human rights is conducted on an ad hoc basis by NGOs targeting specific audiences. Currently the country focal officer through the Secretariat of the Pacific Community is facilitating human rights activities for the Government of Tuvalu.

138. Youth groups are running their own programmes and workshops on human rights as most of the young generation do not understand their rights and overall, the concept of human rights.

139. There were no local NGOs focused entirely on human rights, although there were no known barriers to their establishment. Some human rights advocates, such as the Tuvalu National Council of Women, operated under the auspices of the Tuvalu Association of Nongovernmental Organizations, which was composed primarily of religious organizations. The people's lawyer monitored sentencing, equality before the law, and human rights issues in general. This institution, which at times was vocally critical of the government, nonetheless was supported by the government, which frequently sought its advice. The few other local organizations involved in human rights issues generally operated without government restriction, investigating and publishing their findings on human rights cases.

140. However, opportunities to publicize such information locally were severely limited due to the lack of local print and electronic media. Government officials were somewhat cooperative and responsive to local organizations' views. The government cooperated with international governmental organizations and permitted visits by UN representatives or other organizations. Although the country does not have a human rights ombudsman, persons can raise human rights concerns and complaints with the Office of the People's Lawyer<sup>101</sup>.

**8. Budget allocations and trends: budget allocations and budgetary trends, as percentages of national or regional budgets and gross domestic product (GDP) and disaggregated by sex and age for the implementation of the State's human rights obligations and the results of any relevant budget impact assessments**

141. The National Budget does not have a monetary amount specifically allocated for the implementation of the State's human rights obligations. However for each financial year, the government allocates a certain amount of financial assistance (depending on total government revenue) to the Tuvalu National Council of Women which would assist them in the implementation of human rights related matters, particularly women's rights and gender issues.

142. The Department of Women has also been seeking financial assistance from overseas donors to assist them in trying to promote and implement human rights issues especially gender equality which is usually the focus of their training programs and workshops to increase awareness and also to develop the mind set of women in particular from the usual mentality that they have in mind on the issue of gender equality.

<sup>101</sup> <http://www.state.gov/j/drl/rls/hrrpt/2010/eap/154406.htm>

**9. Development cooperation and assistance: the extent to which the State benefits from development cooperation or other assistance which supports human rights promotion, including budgetary allocations; information on the extent to which the State provides development cooperation or assistance to other States which supports the promotion of human rights in those countries**

143. Tuvalu became a member of the Commonwealth in 2000, immediately following its joining the United Nations as the 39th member. Tuvalu is also a founding member of the Pacific Islands Forum and a member to several regional organizations such as the Secretariat of the Pacific Community (SPC), Secretariat of the Pacific Regional Environmental Programme (SPREP), and Secretariat of the Pacific Geoscience Commission (SOPAC). Tuvalu's membership to the mentioned Pacific regional organisations has allowed for improvements in the area of sustainable development, economic trade and overall well being of its citizens.

144. The government of Tuvalu currently receives support from the Pacific Islands Forum Secretariat (PIFS), the Secretariat of the Pacific Community (RRRT) (SPC/RRRT) and the Office of the High Commissioner for Human Rights Pacific Regional Office (OHCHR) with its human rights activities and reports. The government of Tuvalu received the Special Rapporteur for Water in 2012. The visit was organised in partnership with the government of Tuvalu and the OHCHR Pacific Regional Office.

145. AusAid and NZAid have provided assistance to Tuvalu on human rights related issues. One of AusAID financial assistance was through the National Council of Women which assisted the Council in implementing its programs especially awareness programs on human rights related issues. NZAid has also given financial assistance through the National Council of Women in funding the Micro-Credit Scheme. This scheme enables women who are economically disadvantaged to be able to get financial assistance from this scheme in order for them to start up some sort of business that is of interest to them to support them financially and their families.

**10. Factors or difficulties of a general nature affecting or impeding the implementation of international human rights obligations at the national level**

146. Currently Tuvalu is considering the establishment of a national human rights institution as per its commitment to the agreed recommendation from the Universal Periodic Review. Tuvalu will need to hold national consultation on the establishment of a national human rights institution

147. Tuvalu like other small island states in the Pacific face huge challenges in the promotion and protection of human rights. Listed below are some factors and or difficulties that generally affects or impede the implementation of international human rights obligations:

- (a) Lack of awareness and understanding on human rights by both governments and civil society;
- (b) Inadequate capacity on both government and civil society to undertake human rights work;
- (c) Geographical isolation of the islands;
- (d) Lack of funding opportunities to undertake human rights promotion;
- (e) Competing priorities at the national level;
- (f) The perception by many society of a conflict between human rights and customary practices,

(g) Lack of the economic, technical, human and institutional capacity to participate in international standard-setting, pursue ratification and fulfill the resulting commitments at the national level,

(h) Competing priorities for scarce government funds, and in some cases, a desire to avoid international scrutiny of domestic practices.

## **D. Reporting process at the national level**

### **1. The existence of a national coordinating structure for reporting under the treaties**

148. The structure for reporting on treaties is based on the requirements for reporting of individual treaties. The Ministry responsible for implementing a particular treaty, in compliance with the reporting requirements for that treaty is primarily responsible for preparing the report with the assistance of a taskforce whose membership includes usually includes the Office of the Attorney-General, government departments, civil societies and NGOs. The draft report is then presented to the Development Coordinating Committee (DCC) for final comments and recommendations before presentation to Cabinet for endorsement. Once Cabinet endorses the report, it is then submitted to the treaty monitoring bodies. As a matter of practice, the responsible Minister may table the report in parliament either before or after it was submitted to the treaty monitoring bodies.

### **2. Participation of departments, institutions and officials at national, regional and local levels of governance and, where appropriate, at federal and provincial levels**

149. Government departments are involved in the preparation of the report CEDAW and CRC. The compilation of The Common Core Document and the CEDAW Report 2012 involved the various government departments that work on issues pertaining to the rights of women. Significant to this is assistance provided for by Pacific regional organisations in the collation, analysis of information derived for both the reports.

### **3. Whether reports are made available to or examined by the national legislature prior to submission to the treaty monitoring bodies**

150. There is no legal requirement for reports to be scrutinized by parliament before they are submitted to the treaty monitoring bodies. The process is as described in paragraph (a).

### **4. The nature of the participation of entities outside of government or relevant independent bodies at the various stages of the report preparation process or follow-up to it, including monitoring, public debate on draft reports, translation, dissemination or publication, or other activities explaining the report or concluding observations of the treaty bodies. Such participants may include human rights institutions (national or otherwise), non-governmental organizations, or other relevant actors of civil society, including those persons and groups most affected by the relevant provisions of the treaties**

151. The Pacific Islands Forum Secretariat through the Political Governance and Security Programme has provided assistance to its members on various human rights activities namely the Universal Periodic Review and with treaty ratification, implementation and reporting. The PIFS have also provided assistance with the common core document through the provision of policy and technical assistance.

152. SPC has provided assistance to Tuvalu through Technical Assistance coming over to train staff within the Women's Department (capacity building) and also to implement workshops to assess the situation of gender issues in Tuvalu. Such assistance from SPC is usually offered upon request from the Women's Department.

153. UN Women has also been giving continuing support and financial assistance on human rights related issues especially with women's rights in Tuvalu. The Department of Women would appreciate more financial assistance to assist in achieving its international obligations under CEDAW. Specifically to implement awareness programs such as trainings and workshops on gender related issues within the community.

154. UNDP's support in the area of Good Governance and Human Rights focused on addressing the United Nations Development Assistance Framework (UNDAF) Outcome 2: Good Governance and Human Rights. Specifically, UNDP's support from 2008 – 2012 is delivered through the Tuvalu Parliament Support Project. It focuses on achieving the following outputs: (i) institutional strengthening and resourcing of parliament secretariat; (ii) provide targeted support to members of parliament to support their law making, oversight representational roles; and (iii) support the Parliament Secretariat to engage in civic education initiatives that will generate public interests in parliamentary governance and participatory decision making at the national and local levels. Respecting and integrating the cultural values of the people of Tuvalu, related activities will include principles of transparency, participation, responsiveness, accountability, empowerment and equity.

**5. Events, such as parliamentary debates and governmental conferences, workshops, seminars, radio or television broadcasts, and publications issued explaining the report, or any other similar events undertaken during the reporting period**

155. There is no legal requirement that the report needs to be explained or debated in parliament or any other related requirement that has to be undertaken during the reporting period. In practice, Parliament often debates on the report upon request from members of Parliament that certain relevant issues concerning the report needs to be raised during parliament session. Often if concerns are raised regarding the report, the debate is often done thoroughly as it is of interest to most members of Parliament as the issue of gender equality is an ongoing one within the society.

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