



Convention on the Rights of the Child

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Consideration of reports submitted by States parties under article 44 of the Convention

Initial report of States parties due in 1997*

Tuvalu

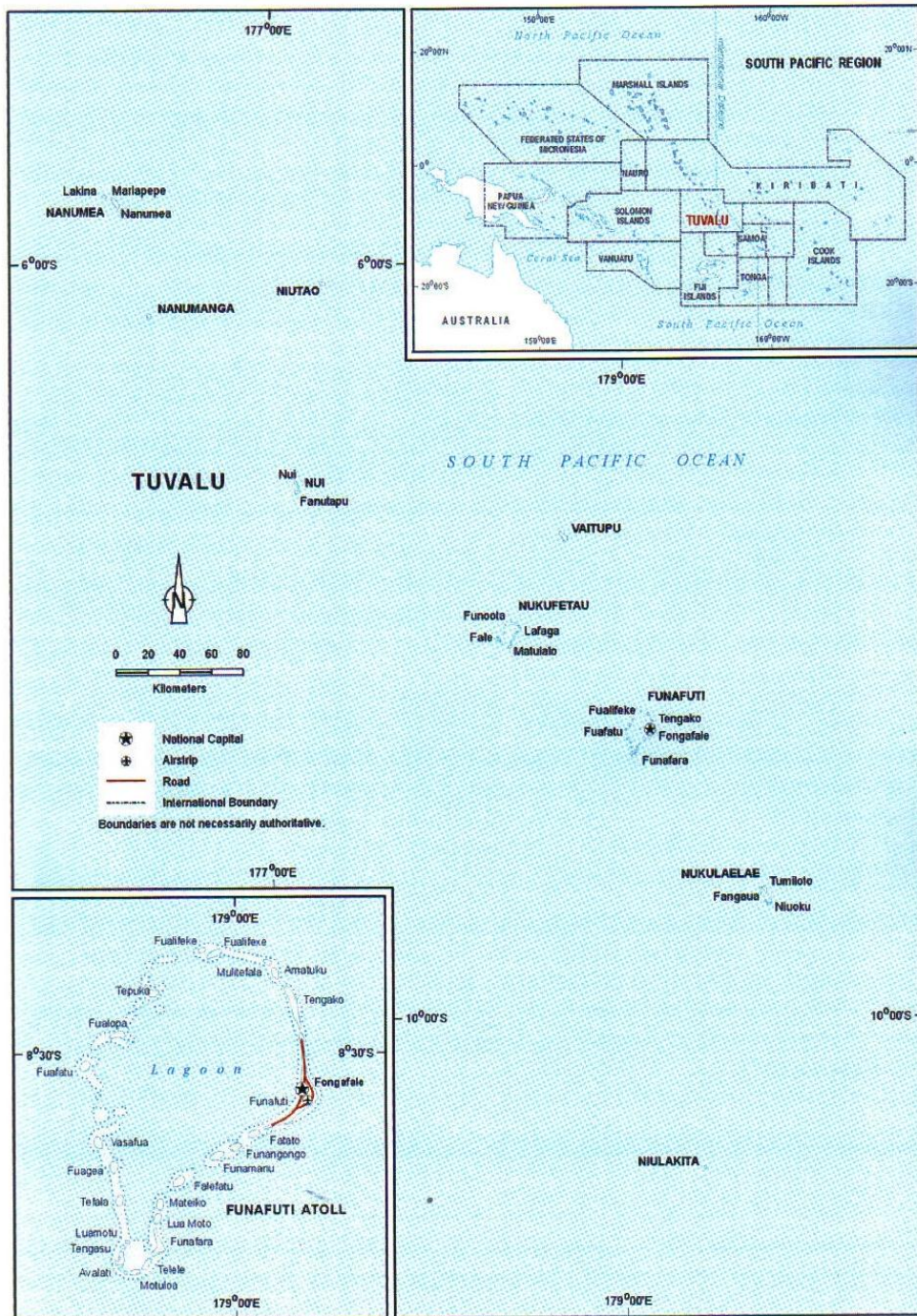
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* In accordance with the information transmitted to States parties regarding the processing of their reports, the present document was not edited.

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The map of Tuvalu



Source: Asian Development Bank/Tuvalu Government (2005)

I. Introduction

A. Land and people

1. Tuvalu is a small island nation in the Pacific Ocean midway between Hawaii and Australia, located immediately to the west of the International Dateline between latitudes 5 degrees and 10.5 degrees south of the equator. Its nearest neighbours are Kiribati to the north-east, Nauru to the north-west, Solomon Islands to the west, Vanuatu to the south-west, Fiji to the south, and Samoa to the south-east. The total land area is only 25.6 square kilometres, comprised of four reef islands and five atolls, with a vast sea area of approximately 900,000 square kilometres.

2. Settled by Polynesians some 700 years ago, the islands were known as Tuvalu, meaning “cluster of eight”, as only eight islands were then inhabited. Tuvalu was named the Ellice Islands in 1819, and Christian missionaries arrived in the 1860s. The islands were governed by the United Kingdom initially as part of a protectorate (1892 to 1916), then as part of the Gilbert and Ellice Islands Colony (1916 to 1974), and finally as a separate dependency re-named Tuvalu (1975 to 1978). Tuvalu gained political independence by agreement on October 1, 1978.

3. Tuvalu’s post-Independence population of 7,349 people has increased to approximately 11,000. Urban drift has resulted in a population shift to the capital, with almost half the population now in Funafuti (from 25% in 1979) and a corresponding doubling of urban density to 1,610 people per square kilometre. Tuvalu is largely homogenous, with the overwhelming majority of the population being Polynesian and Christian (with over 90% belonging to the national protestant denomination). Tuvalu has a strong and peaceful traditional culture based on cooperation, common welfare and social stability, with each family apportioned a role in the community.

4. Tuvalu’s climate is uniformly hot (26° to 32° C) with relatively high humidity. Sea surface temperature varies little from a mean of 29° C. Westerly winds and gales coincide with the wet season from December to March. Average annual rainfall ranges from 2500mm in the north to 3500mm in the south, with occasionally lengthy droughts in the north. The central- and southern-most islands lie within the cyclone belt of the Pacific, resulting in the periodic uprooting of tree crops, swamping of gardens and coastal erosion.

5. With small coral islands seldom rising more than 4 metres above sea level and a fragile coastal environment, Tuvalu is highly vulnerable to rising sea levels, increasing population density, unsustainable use of resources, and poor waste management and pollution control.

6. The islands are remote, with international air service available only from Nausori, Fiji, twice weekly on Air Pacific. There is no domestic air service. The government-owned MV Nivaga II and MV Manufolau provide regular, subsidized inter-island transportation of passengers and cargo by ship. Unsealed roads on the outer islands restrict travel to trucks and motorcycles; Funafuti’s roads were sealed in 1998. Electricity services have recently been extended to the outer islands, with limited hours; Funafuti has twenty-four hour electricity.

7. Designated a Least Developed Country by the United Nations, Tuvalu is dependent on foreign financial assistance. Development partners include Australia, the U.K., New Zealand, Japan, the E.U. and Taiwan. Tuvalu has few natural resources and limited potential for economic development. Government revenue is mainly derived from the

Tuvalu Trust Fund (a trust established by international donors in 1987), fishing licences, marketing of its internet domain name (.tv) and direct taxes.

8. A large subsistence sector engaged in agriculture and fishing co-exists with a developing formal cash economy dominated by government activity. The private sector is very small (approximately one-tenth of the paid work force), and includes wholesale and retail trade, construction, manufacturing for the domestic market (coconut oil, furniture), lodgings, and services such as automotive, bicycle repair, laundry and catering. A small NGO sector provides some additional employment. Remittances from Tuvaluans working overseas as seafarers are a significant source of family income.

9. The following Table 1 provides a snapshot of Tuvalu's demographic, socio-economic and cultural characteristics:

Table 1
Demography, socio-economic and cultural statistics

<i>Indicator</i>	<i>Statistic</i>	<i>Male</i>	<i>Female</i>	<i>Year</i>	<i>Source</i>
Census population	9,561	4,729	4,832	2002	a
Current resident population	10,826- 11,126*			2007	c
Census population by island:					
Nanumea	664	305	359		
Nanumaga	589	276	313		
Niutao	663	314	349		
Nui	548	263	285		
Vaitupu	1591	799	792		
Nukufetau	586	286	300		
Funafuti	4492	2282	2210		
Nukulaelae	393	186	207		
Niulakita	35	19	16	2002	a
Population distribution:					
Urban (Funafuti)	47%	48%	46%		
Rural	53%	52%	54%	2002	a
Population density per km ²					
Urban (Funafuti)	1,610				
Rural	222			2002	a
Average household size	6			2002	a
Households headed by women	23%			2004/5	b
Sex ratio (males per 100 females)	97			2002	a
Population under 15	36.4%	39%	34%	2002	a
Population over 60	8.6%	7%	10%	2002	a
Life Expectancy	63.6	61.7	65.1	2002	c
Number of births annually	220			2008	d
Fertility rate	3.6			2008	d
Infant mortality per thousand live births	13.6 (3 deaths)			2008	d
Maternal mortality per thousand births	5.4(1 death in each year);			1999- 2003;	d

<i>Indicator</i>	<i>Statistic</i>	<i>Male</i>	<i>Female</i>	<i>Year</i>	<i>Source</i>
	Nil			2008	
Ethnic origin:					
Tuvaluan	93.6%				
Part-Tuvaluan	4.6%				
I-Kiribati	0.9%				
Other	0.9%			2002	a
Religion:					
Ekalesia Kelisiano Tuvalu Church	91%				
Seventh Day Adventist	2%				
Bahai Church	2%				
Brethren Assembly	2%				
Other	3%			2002	a
Education level:					
None	22.5%	17.8%	26.7%		
Primary	55.1%	58.1%	52.4%		
Secondary	14.3%	14.7%	13.9%		
Tertiary	8.1%	9.4%	7.0%	2002	a
School attendance rate (age 6-15)	96.7%	95.3%	98.4%	2004/5	b
Literacy rate	98%			2001	c
Gross domestic product (\$A)	\$27,490,200			2002	c
GDP per capita (\$A)	\$2,871			2002	c
Balance of trade (\$A)					
Exports	\$25,264				
Imports	\$32,927,474			2008	c
Weekly gross income (≥15 yrs) (\$A)					
Total					
Urban (Funafuti)	\$82.77	\$100.83	\$68.86		
Rural	\$124.27	\$154.36	\$100.29		
	\$50.14	\$57.30	\$44.77	2004/5	b
Main source of household income					
No income					
Wages	6.2%				
Own business	59.1%				
Sale of fish/handicrafts/hawker/ copra	5.4%				
Remittances	9.1%				
Other	18.1%				
	2.2%			2002	a
Economic activity (≥15 yrs)					
Labour force participation rate	58.2%	69.6%	47.9%		
Proportion of employment in subsistence activity	39%	48%	32%		
Formal employment to population rate	33.2%	44.9%	22.7%	2002	a

<i>Indicator</i>	<i>Statistic</i>	<i>Male</i>	<i>Female</i>	<i>Year</i>	<i>Source</i>
Unemployment rate	6.5%**	4.9%	8.6%		
Dependency ratio (15-59)	82			2002	a
Average rate of inflation				1997-	
Over ten years	0.86-5.14%			2007	
Last year	9.67%			2008	c

* Range reflects fluctuations over the year

** A Household Income and Expenditure Survey undertaken in 2004/05 yielded a much higher unemployment rate of 16%

Sources: (a) Population and Housing Census 2002
 (b) Household Income and Expenditure Survey 2004/05
 (c) Central Statistics Division (Government of Tuvalu)
 (d) Ministry of Health (Government of Tuvalu)

B. General political structure

10. Tuvalu is a constitutional monarchy with a parliamentary democracy.
11. Her Majesty Elizabeth the Second is the Sovereign and Queen of Tuvalu, and Head of State. She is represented by a Governor-General, who must be a citizen of Tuvalu and is appointed in accordance with the advice of the Prime Minister.
12. There are 15 members of Parliament: two from each of Nanumea, Nanumanga, Nui, Nukufetau, Vaitupu and Funafuti, two from Niutao and Niulakita together, and one from Nukulaelae. Members of Parliament are directly elected by universal citizen adult suffrage by people over the age of 18 for four years, subject to dissolution of Parliament.
13. The Prime Minister is elected by the members of Parliament. Six other members are appointed Ministers by the Head of State in accordance with the advice of the Prime Minister. The Cabinet is composed of these six Ministers and the Prime Minister. The Speaker, elected by the members of Parliament, presides over Parliament.
14. Though the executive authority of Tuvalu is formally vested in the Head of State, the Cabinet is collectively responsible for the performance of the executive functions of the Government. Ministers are assigned responsibility for the conduct of Government business.
15. The legislative authority of Tuvalu is vested in Parliament. The Head of State must assent to a bill passed by Parliament, which then becomes an Act of Parliament.
16. In addition, local government in the form of traditional island assemblies called *Kaupule* are authorized by statute to provide services and pass bye-laws in relation to local issues including agriculture and fisheries, village planning, education infrastructure and supervision, protection of land, public health and local utilities.
17. Tuvalu's judiciary is independent and appointed in accordance with the Constitution or applicable law. The judicial system in Tuvalu consists of the Sovereign in Council, the Court of Appeal, the High Court, and courts established by law:
18. Each island in Tuvalu has a Lands Court and an Island Court.¹ Lands Courts maintain jurisdiction regarding land and related matters, for those who own or are eligible

¹ Island Courts Act; Native Lands Act.

to own native lands. Appeals are heard by the Lands Court Appeals Panel with further appeals to the Senior Magistrate's Court and the High Court. Island Courts have summary jurisdiction over criminal matters (generally for offences with a penalty of up to 6 months in prison and/or a \$100 fine) and civil matters (including family matters and excluding matters under the jurisdiction of the Lands Courts). Appeals are heard by Magistrates' and Senior Magistrate's Courts and the High Court.

19. The Senior Magistrate's Court and Magistrates' Courts have original jurisdiction over criminal matters (offences up to 14 years in prison for the Senior Magistrate and up to one year for others) and civil matters (excluding lands), as well as limited appellate jurisdiction.² To date, only a Senior Magistrate has been appointed, hearing cases in Funafuti and in the outer islands as needed, at either the Magistrates' or Senior Magistrate's level.

20. The Constitution establishes the High Court of Tuvalu, which is constituted by the Chief Justice and any other judges appointed by the Head of State on the advice of the Cabinet. Since Independence, the Chief Justice has been the sole judge of the High Court. Currently, the Chief Justice, an expatriate, visits Tuvalu once or twice yearly for sittings of the High Court. The High Court has both original and appellate jurisdiction.

21. The Constitution also provides for a Court of Appeal to hear appeals from High Court decisions, and for the Sovereign in Council to hear certain appeals from the Court of Appeal. The Court of Appeal has been established by statute, and became effective in 2009. The Government has committed to convening the Court of Appeal in 2009. Appeals to the Sovereign in Council are directed to Sovereign in Council in the United Kingdom.

C. General legal framework within which human rights are protected

1. Protection of human rights

22. Human rights provisions are set out in the Constitution of Tuvalu. The Bill of Rights in the Constitution provides that every person in Tuvalu is entitled to fundamental rights and freedoms, including life, personal liberty, security of the person, property and privacy rights, protection of the law, freedom of belief, expression, assembly, association and movement, and freedom from discrimination on the basis of race, place of origin, political opinion, colour, and religious or lack of religious beliefs. The fundamental rights and freedoms apply between individual persons, corporations or associations, and between such individuals and government bodies.

23. Limitations on specific rights and freedoms are set out in the Bill of Rights, and discussed in the relevant sections in chapter II. 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).

24. 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

² Magistrates' Courts Act.

practices, the laws of Tuvalu and other democratic countries, and international conventions, declarations, recommendations and judicial decisions on human rights.

2. Jurisdiction and remedies

25. The High Court of Tuvalu has jurisdiction to enforce the Bill of Rights. Questions arising in a subordinate court are referred to the High Court for determination. The High Court (Constitutional Redress or Relief) Rules were prescribed in 1982. An appeal from the High Court may be made to the Court of Appeal or the Sovereign in Council.

26. Under the Constitution, the High Court “may make any orders, issue any writs and give any directions that it thinks appropriate for enforcing or securing the enforcement” of the Bill of Rights. A law may be declared not to be reasonably justifiable in a democratic society. Additional remedies available generally to the High Court under the Superior Courts Act include making orders to prevent abuse of the process of the law and making binding declarations of rights. Since no application for enforcement of the Bill of Rights has been successful to date, specific remedies, including compensation and rehabilitation, have not been canvassed by the judiciary.

27. The Bill of Rights also provides for an independent tribunal, established for that purpose, to review (a) a restriction on an individual’s ability to move freely within or to leave Tuvalu and (b) a detention during a public emergency. The tribunal may make a non-binding recommendation to the relevant authority. There has been no need to constitute such a tribunal to date.

3. Incorporation of international human rights instruments into law

28. Tuvalu is a party to the Convention relating to the Status of Refugees (by succession), the Geneva Conventions (1981), the Convention on the Rights of the Child (CRC) (1995) and the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) (1999). The accession process is carried out by the executive branch of government, without confirmation in domestic law.

29. 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 Court³ the provisions of human rights conventions cannot be enforced prior to transformation into internal laws or administrative regulations.

30. 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.⁴ This may effectively alter the way in which existing laws are applied, if ambiguous.⁵ 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.

³ Anderson v R [2003] TVHC 27; HC Crim Case No 5 of 2003 (26 September 2003), Tepulolo v Pou [2005] TVHC 1; Case No 17 of 2003 (24 January 2005).

⁴ Interpretation Act, s.17.

⁵ Tepulolo v Pou [2005] TVHC 1; Case No 17 of 2003 (24 January 2005).

4. Institutional machinery

31. Tuvalu does not have a government agency, ombudsman⁶ 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.

D. Information and publicity

32. Efforts have been made to promote public awareness of CRC and CEDAW. For example, the Legal Literacy Project has produced radio sessions describing and discussing the terms of CEDAW and CRC. For more regarding CRC, see chapter II, section A, subsection 3.

II. The Convention on the Rights of the Child*

A. General measures of implementation

Articles 4, 42 and 44, paragraph 6

(a) Measures taken to harmonize national law and policy with the provisions of the Convention

33. Various initiatives have considered the consistency of national law with the CRC. These include a legal analysis conducted for the government by an external consultant (1994), a review of human rights issues by the Legal Literacy Project (2008), and, to some extent, the Universal Periodic Review (2008).

34. Dedicated legal measures have not yet been taken to harmonize national law with the provisions of the CRC. As will be seen throughout this report, there are several areas in which Tuvalu laws do not reflect our commitments under the CRC. This reflects the legislative legacy left from the colonial era together with a lack of resources and capacity to undertake comprehensive change. There are only seven practising Tuvaluan lawyers, with three of these in the Attorney General's Office, assisted by an expatriate adviser. The Attorney General is the primary legal adviser for the Government of Tuvalu, and serves also as the Public Prosecutor responsible for all High Court and some Magistrates' Courts prosecutions. The Attorney General's Office has had neither the capacity nor the funding available for sweeping law reform initiatives; consequently new and amended legislation typically arises in one area at a time, often in the course of a donor-funded project. However, as new legislation is introduced, Tuvalu's obligations under CRC are being considered. For example, tobacco control legislation was recently introduced, providing

⁶ An Ombudsman Commission was established under the Leadership Code Act in 2006 (though not yet in place), but this role relates to leader misconduct under the Code, not human rights.

* Prepared in accordance with the "General guidelines regarding the form and content of initial reports to be submitted by States Parties under article 44, paragraph 1(1), of the Convention" as set out in CRC/C/5.

protection for children up to age 18, and upcoming legislation in the area of police services proposes to create additional safeguards for those under 18.

35. While there is no national policy or plan of action for children, a National Youth Policy (for youth between 15 and 34 years of age) was developed for the period 2005 to 2010. Other national policies have been developed in consideration of the interests of children and youth, and in a manner consistent with the CRC. Recent examples include the Millennium Development Goals, World Fit for Children Plan of Action 2002, Te Kakeega II (National Strategy for Sustainable Development) 2005-2015, Department of Education Strategic Plan 2006-2010, National Policy on Early Childhood Care Education 2007, and Ministry of Health Strategic Plan 2008-2018.

36. Public expenditure on health has increased rapidly, from \$2.6 million in 2005 to \$4.5 million budgeted for 2009. Recurrent expenditures on health represent 12.8% of the national budget. Public expenditure on education has also increased substantially, from \$5.3 million in 2005 to \$9.7 million in 2009. Recurrent expenditures on education represent 24.3% of the national budget.

(b) Existing or planned mechanisms for coordinating policies relating to children and for monitoring the implementation of the Convention

37. 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.

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

(c) Measures undertaken or foreseen to make the principles and provisions of the Convention widely known

39. Members of NACC have worked in their respective sectors to raise awareness of the principles and provisions of the CRC, primarily in the workplace. In the education sector, the Tuvalu Teachers' Association has promoted the CRC by running awareness workshops for its members since 2000 and is continuing the process on a yearly basis.

40. Through the Department of Education, a "Children's Parliament" was convened for one week in 2006, with six representatives from each primary school and ten from each of the two secondary schools. This forum included discussion of the CRC as well as other issues important to children such as the environment, health and learning to live together. Another session is planned for 2010. Regular meetings of parents and teachers at the schools also discuss the CRC.

41. NACC has sponsored celebrations for Children's Day, a national public holiday, in the past (it currently falls within the August school holidays). In 2008, for the 60th anniversary of the Universal Declaration of Human Rights, primary school children were invited to select an article of the CRC to present to the community.

42. In 1996, the Tuvalu National Council of Women established a Legal Literacy Project with assistance from the Regional Rights Resource Team. The Project's Legal Rights Training Officers have been actively involved in advocating and promoting children's rights through radio, community workshops and also in their community paralegal trainings. This year, the Project prepared a series of eight radio programmes discussing the articles of and issues relevant to CEDAW and CRC, which has resulted in much discussion within communities around Tuvalu. Some of the issues brought out in these radio programs have been used by Tuvalu Radio for their community radio debates.

43. After completion of the initial reporting process in 2009, NACC anticipates putting more time into raising awareness among the public. NACC and Tuvalu government will take opportunity to raise awareness when responding to the *List of Issues* from the CRC Committee.

(d) Measures foreseen to make this report widely available to the public in Tuvalu

44. This report will be available to members of the public on the internet and at key government offices. The report includes the text of the Convention articles discussed, since the provisions are presently not well known. NACC intends to present issues raised in the report and the comments received from the Committee on the Rights of the Child to the public through the radio and community workshops, subjecting to available funding.

(e) General Constraints

45. Tuvalu's limited economy, tiny population and scattered geography create three recurrent constraints to social development and implementation of international commitments under human rights conventions: a shortage of skilled human capital, a lack of financial resources, and delays in accessing the islands. Tuvalu has limited capacity to undertake law reform and then absorb the ensuing procedural and institutional obligations country-wide. Poor infrastructure, small numbers of professional staff and lengthy travel between islands pose particular challenges for the effective delivery of health care, education, and services for the vulnerable. Traditional Tuvalu culture both supports and restrains harmonization with human rights instruments such as CRC; Tuvalu is not presently prepared to prohibit sex discrimination, traditional beliefs. Modern Tuvalu families consider the views of the child but these are practically limited in the communal decision-making setting. In the traditional communal decision making process, there is limited respect for the views of children, and those over the age of 15 are not generally considered to be children needing special protection.

B. Definition of the child

1. Article 1

46. In Tuvalu culture, a child is cared for from the time of conception until she or he becomes an adolescent. Under domestic legislation, children acquire most adult rights by the age of 18 or earlier, with the exception of eligibility for election, and the unqualified right to marry.

2. Voting and Election to Parliament

47. Citizens of Tuvalu are entitled to vote in Parliamentary elections at the age of 18. Tuvaluans must be 21 years of age to qualify to be elected as a Member of Parliament.⁷

3. End of compulsory education

48. Schooling is compulsory for children between the ages of 6 and 15.⁸

4. Employment

49. Children under 14 are prohibited from employment. There are a variety of restrictions on hazardous employment for children between 14 and 18 (see section H, subsection 3 (a)).⁹

5. Adoption

50. Under the Adoption of Children Act, children who have attained the age of 12 may not be adopted. Children who are 10 or 11 may only be adopted with their consent, except in extenuating circumstances. Adoptions under the Native Lands Act have no age restrictions.¹⁰

6. Sexual consent

51. Under the Penal Code, girls are able to provide valid consent to sexual activity at the age of 15. There is no minimum age below which a boy is deemed not to have consented to sexual activity; however, a boy under 12 is presumed incapable of having sexual intercourse. There is no age of consent for homosexual activity, which is an offence for males of any age.¹¹

7. Marriage

52. Marriage of a child under 16 is void. Those wishing to marry before attaining 21 years of age must have the consent of a parent, legal guardian or the Registrar General. Tuvaluans have the unqualified right to marry at age 21.¹²

8. Criminal Liability

53. There is no criminal liability under age 10. Liability for children under 14 requires proof of capacity to know that the act or omission was wrong. In addition, a boy under 12 is presumed incapable of having sexual intercourse, thereby affecting his liability for certain sexual offences.¹³

9. Deprivation of Liberty

54. Tuvalu law does not set a general minimum age for the deprivation of liberty within its juvenile justice, immigration and mental health systems.

⁷ Constitution, s. 90, 91; Electoral Provisions (Parliament) Act, s.5, 9.

⁸ Education (Compulsory Education) Order 1984, s.3.

⁹ Employment Act, Part IX.

¹⁰ Adoption of Children Act, s.8, 18; Native Lands Act, s.16.

¹¹ Penal Code, Part XVI and s.14.

¹² Marriage Age, s. 5,7.

¹³ Penal Code, s.14.

10. Imprisonment

55. In criminal proceedings under the jurisdiction of Island Courts (those with sentences of up to six months in prison or a \$100 fine), children under 15 may not be imprisoned, and children 15 or 16 may be imprisoned for a maximum of one month if no other consequence is appropriate.¹⁴ There is no minimum age for imprisonment in other proceedings.

11. Consumption of alcohol and other controlled substances

56. It is prohibited to sell alcohol to children under 18, and for children under 18 to drink alcohol. The sale of tobacco to children under 18 is prohibited.¹⁵

12. Driving a vehicle

57. One may be licensed to drive a motor cycle at age 16, a private motor vehicle at 17, and a commercial or public service vehicle at 21. A provisional motor vehicle license may be obtained at age 16.¹⁶

13. Passports

58. Parental consent is required to obtain a passport, until the age of 18.¹⁷

14. Armed forces

59. Children under the age of 18 may not be enrolled in the police force.¹⁸

15. Gaming and Lotteries

60. Gaming under the age of 18 is prohibited, unless in a private home or in the presence and with permission of a parent or guardian.¹⁹

16. Custody, access and maintenance

61. The Custody of Children Act defines a child as a person under 18, for the purposes of custody, access and maintenance by the custodian.²⁰ The Matrimonial Proceedings Act addresses custody, access and maintenance by the non-custodial parent, but does not define an upper age limit. In light of this oversight, the High Court has adopted the age of 18 as the age of maturity for the purposes of the Matrimonial Proceedings Act.²¹

17. Discriminatory effect

62. Some of these provisions do not apply to all children without discrimination: certain employment protections apply only to boys; the age of sexual consent varies by gender and sexual orientation.

¹⁴ Island Courts Act, s.8.

¹⁵ Alcoholic Drink Act, s.99; Tobacco Control Act, s.11.

¹⁶ Traffic Act, s.14, 15.

¹⁷ Passports Regulations, s.3.

¹⁸ Police Regulations, s. 4.

¹⁹ Gaming and Lotteries Act, s.3.

²⁰ Custody of Children Act, s.2.

²¹ *Martin v Martin* [2003] TVHC 15; Case No 02 of 2003 (14 April 2003).

C. General principles

1. Non-discrimination

Article 2

(i) *Principal legal measures*

63. The principle of non-discrimination is enshrined in the Bill of Rights in the Constitution, but without special reference to children. “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 rights and freedoms set out in the Bill of Rights (s. 11).²²

64. Discrimination is defined to include differential treatment on the basis of race, place of origin, political opinion, colour, and religious or lack of religious beliefs (s. 27).²³

65. There is no right to be free from discrimination on the basis of sex. Although the Bill of Rights applies to every person regardless of sex (s.11), this means that females have the same fundamental rights as males but does not extend the grounds of prohibited discrimination in section 27 to include sex or gender. This was confirmed in the only case to date which has claimed a breach of the Constitutional right to be free from discrimination.²⁴

66. There is also no right to be free from discrimination on the basis of language, birth, disability or other status.

67. Further, the existing right not to be treated in a discriminatory manner does not apply in many contexts affecting children. Section 27(3)²⁵ states that freedom from discrimination does not apply in relation to laws making provision:

(a) For the imposition of taxation by the Government or a local government or authority; or

(b) The spending of money by the Government or a local government or authority; or

(c) With respect to persons who are not citizens of Tuvalu;²⁶ or

(d) In respect of -

(i) Adoption; or

(ii) Marriage; or

(iii) Divorce; or

(iv) Burial; or

(v) Any other such matter, in accordance with the personal law, beliefs or customs of any person or group; or

²² s11 The fundamental human rights and freedoms.

²³ Freedom from discrimination.

²⁴ *Tepulolo v Pou* [2005] TVHC 1; Case No 17 of 2003 (24 January 2005).

²⁵ (3) Subsection (2) does not apply to a law so far as it makes provisions — (a)–(f) stated in text.

²⁶ The impact of section 27(3) is such that, although non-citizens are protected from discriminatory treatment generally along with all other persons in Tuvalu, such protection does not extend to laws affecting them specifically as non-citizens.

(e) In relation to land; or

(f) By which any person or group may be given favourable treatment or unfavourable treatment which, having regard to the nature of the treatment and to any special circumstances of the person or group, is reasonably justifiable in a democratic society having a proper respect for human rights and dignity.

68. An act that is in accordance with Tuvaluan custom and reasonable in the circumstances is not inconsistent with the right to freedom from discrimination, provided that it is not harsh or oppressive, and is reasonably justifiable in a democratic society having a proper respect for human rights and dignity (s. 27(7))²⁷. An authorized restriction on other fundamental rights and freedoms in or by law may extend to a restriction on freedom from discrimination (s. 27(6)).²⁸

69. Discriminatory treatment may also be permissible if an act is authorized by a law enacted prior to Independence (s. 27(8))²⁹, or done during a state of emergency (s. 27(2)).

70. The Bill of Rights does not protect children against discrimination or punishment on the basis of their parents', legal guardians' or family members' status, such as their marital status, opinions and beliefs.

(ii) *Policy and Practice*

71. In government policy and practice, equal opportunities are given to boys and girls, and to children of all backgrounds. Disaggregated data is maintained in the health and education sectors to monitor progress on the basis of sex and urban/rural status. In 2009 the Department of Education has facilitated the participatory development of school policy at school level, where children at primary schools had contributed to the formulation of their own school policy.

72. In traditional Tuvalu society, the apex of the social hierarchy is male and there is a division of power and labour by gender. Men are the customary leaders, and continue to dominate local government run by the Kaupule (traditional assembly), as well as national government. Boys in their teens are taught men's tasks such as fishing, toddy cutting, pulaka and talo cultivation, house building and maintenance work. Girls are taught domestic skills and handicrafts. Despite these traditions, girls now outnumber boys in secondary school from the age of 15. Women have made a significant incursion into the public service, and have increased their representation in the wage-earning sector.³⁰

²⁷ Subject to section 12(2) (which relates to harsh, oppressive or otherwise unlawful acts) and 15 (definition of "reasonably justifiable in a democratic society") and to any other law, no act that —(a) is in accordance with Tuvaluan custom; and(b) is reasonable in the circumstances, shall be considered to be inconsistent with subsection (2).

²⁸ (6) Nothing in or done under a law shall be considered to be inconsistent with subsection (2) to the extent that the law provides that any person may be subjected to any restriction on the rights and freedoms guaranteed by — (a) section 21 (privacy of home and property); and (b) section 23 (freedom of belief); and (c) section 24 (freedom of expression); and (d) section 25 (freedom of assembly and association); and(e) section 26 (freedom of movement); and (f) section 28 (other rights and freedoms) to the extent authorized by that section.

²⁹ Nothing in or done under a law shall be considered to be inconsistent with subsection (2) — (a) if the law was in force in Tuvalu immediately before the date on which this Constitution took effect; or (b) to the extent that the law repeals and re-enacts any provision that has been contained in a law in force in Tuvalu at all times since that date.

³⁰ The ratio of women to men earning salaries has improved from 1:1.9 in 1994 to 1:1.3 in 2005 (ADB, 2006).

73. Children with disabilities have recently been identified as a disadvantaged and vulnerable population.³¹ In practice, disabled children have not always had access to appropriate education, or to specialized mental and physical health services to address their disabilities (see chapter II, section F, subsection 2).

74. While having a child outside marriage is a “luma” (disgrace) for the mother and her family, there is no customary discrimination against the child. Measures are being taken to ensure the support and right of inheritance for a child born to a single mother.

75. To the extent that it may exist in Tuvalu, homosexuality is hidden, stigmatized, and not acceptable to most in the community. The only data available on this topic is a Behavioural Surveillance Survey from 2006 in which over 13% of male youth between the ages of 15 and 24 reported having had sex with another male.

2. Best interests of the child

Article 3

(i) *Principal legal measures*

76. The primary consideration of the best interests of the child is found in domestic legislation as follows:

77. The Custody of Children Act (1973) provides for custody, access, and maintenance by the custodial parent. In exercising jurisdiction under this section, “the court shall regard the welfare of the child as the first and paramount consideration and shall not take into consideration whether from any other point of view the claim of the father is superior to that of the mother or the claim of the mother is superior to that of the father” (s. 3(3)).

78. The Matrimonial Proceedings Act (1984) provides for custody, access and child maintenance in the context of divorce proceedings. The Act states that “the welfare of the children is of paramount importance, at least equal to that of the parties to the marriage”, while also providing that orders may not be inconsistent with Tuvaluan custom.

79. The Adoption of Children Act (1985) governs all non-native and inter-country adoptions, as well as native adoptions at the option of the parties. This Act states that the welfare and interests of the child are the paramount consideration in adoption proceedings.

80. Orders regarding the residence and maintenance of a child of a single mother, and native adoptions, are also made by the Lands Courts pursuant to the Native Lands Act and its subordinate legislation, the Tuvalu Lands Code. These do not make reference to the best interests of the child as a criterion for adoption or custody. The Tuvalu Lands Code allows for the annulment of adoption where the child is not dutiful. The Native Lands Act favours paternal custody of children of unmarried parents after age two, to facilitate land inheritance and financial well-being.

81. Custody orders under the Custody of Children Act are explicitly stated to be subject to the Native Lands Act (s. 3(5)), suggesting that the latter’s provisions regarding children of unmarried parents would govern in place of the child’s best interests. Nevertheless, the High Court has held that the requirement in the Custody of Children Act to give paramount consideration to the welfare of the child, without favouring either parent, applies to the

³¹ Tuvalu Millennium Development Goals Report 2006.

Lands Court in a custody proceeding.³² The extent to which this ruling has been understood and utilized is unclear, as the Native Lands Act continues to be applied as written.

(ii) *Policy and Practice*

82. The best interests of children are a primary consideration in the development of education and health policy.

83. When children in Funafuti are involved in the court system, a social welfare officer trained in counselling/psychology within the Community Affairs Department may report to the court on their interests. However, the adoption process, which is primarily inter-family adoption, does not include an assessment of the child's interests.

3. The right to life, survival and development

Article 6

(i) *Principal legal measures*

84. The right to life is enshrined in the Bill of Rights in the Constitution (s. 16), which provides that no-one shall be killed intentionally. Exceptions are permitted only for the disciplinary proceedings of a foreign disciplined force, actions in the circumstances of war, and the use of lawful, reasonably necessary force.

85. There is no death penalty in Tuvalu.

86. The following are felony offences under the Penal Code:

(a) Abortion in any circumstances: the attempt to procure a miscarriage, the supplying of drugs or instruments thereof (s. 151-153)

(b) Child destruction: causing a child capable of being born alive to die while in the womb, unless done in good faith to preserve the mother's life (s. 214, 215)

(c) Infanticide: a mother causing the death of her child under 12 months, where disturbed by the sequelae of childbirth (s. 199)

(d) Failure to provide the necessities of life for a person in one's charge and endangering his or her life or health (s. 225)

(e) Manslaughter: causing death by unlawful act or omission (s. 192)

(f) Murder: causing death by unlawful act or omission, with malice aforethought (s. 193)

(ii) *Policy and Practice*

87. Measures have been introduced to reduce rates of infant and child mortality, including the referral of all first and complicated births to the hospital in Funafuti, professional ante-natal, delivery and post-natal care for virtually all pregnant women, and vigilant attention to childhood illness. Refer to chapter II, section F, subsection 3 for details on child survival and development.

88. There have been no reported cases of infanticide or murder of children.

³² Tepulolo v Pou [2005] TVHC 1; Case No 17 of 2003 (24 January 2005).

4. Respect for the views of the child

Article 12

(i) *Principal legal measures*

89. Freedom of expression, including the right to communicate ideas and information without interference, is a fundamental right in the Constitution subject to the protection of Tuvaluan values (see chapter II, section D, subsection 3).

90. There is no explicit right for a child to express views in proceedings affecting him or her, except under the Adoption of Children Act. An adoption order for a child of ten or older may not be issued under this Act without the child's consent; the consent may be waived in special circumstances related to the welfare and interests of the child.

91. Since Tuvalu does not have a separate juvenile justice system, a child charged with a criminal offence has the same right as any other person so charged to defend himself or herself in court.

(ii) *Policy and Practice*

92. In traditional Tuvaluan culture, children under 18 are prohibited from participating in meetings of the Falekaupule. Elders are respected as the voice of the community. Similarly, decisions in families are made by the adults, with the final decision made by the eldest male in the family. Children's participation is not acknowledged with the understanding that adults know best. At present, most Tuvaluans have been educated to the extent to include the child in family matters as encouraged through parent workshops organized by schools and encouraged by the Education Department. The grandparents who usually spoil their grandchildren often acknowledged their grandchildren's wishes. The bond is traditionally valued and still valued greatly.

93. In accordance with tradition, children do not ordinarily participate in customary adoption proceedings, family law proceedings, or in planning at the community level.

94. At the government level, planners have begun to seek out and respect children's views on matters affecting them. The views of youth were sought and incorporated in Te Kakeega II (National Strategy for Sustainable Development) in 2004, the National Youth Policy for 2005-2010, and the recent Ministry of Health Strategic Plan (2008-2018). The views of children were considered in the development of this initial State party report.

95. In criminal proceedings, there is no restriction in practice on a child offender's right to testify. A child victim may be summoned to give evidence as a witness; however, new police procedures proposed would allow for the use of written statements in place of oral testimony in some situations.

96. In health care, there is no minimum age to obtain services without a parent's consent, in law or policy. In practice, health services are provided to children attending on their own; a youth of any age may attend for reproductive health information and care without parental involvement.

5. Implementation Priorities and Specific Goals

97. The Government has identified “the revision of laws, law reform and implementation of international conventions” as an element of the Office of the Attorney General’s programme and budget for 2009.³³

98. The NACC agrees that harmonization of existing legislation with the CRC is a high priority.

99. The NACC has identified the additional goal of incorporating the principles of the best interests of the child and respect for the views of the child into the policies and practices of its own organisations and departments.

D. Civil rights and freedoms

1. Name and nationality

Article 7

(i) *Principal legal measures*

100. Under the Births, Deaths and Marriages Registration Act, it is the duty of the parents (or another informant if the parents are unable) to register a child born in Tuvalu (whether or not a citizen), within 10 days. The legislation includes follow-up procedures to be taken by the Registrar-General to ensure registration. Registration within three months is free.

101. While the particulars to be registered have not been prescribed by regulation, the statutory form includes the child’s name, date of birth and parentage, which are sufficient to acquire a nationality. The child’s name may be added (if not initially registered) or changed upon application of a parent or guardian, within two years of registration. There is no administrative procedure for a change of name thereafter.

102. The public is entitled to search the birth registry, enabling children to know their parentage. Details in the birth registry are not changed upon the adoption of a child. Adoption records are kept separately by the Lands Courts (for customary adoptions) and in an adoption register (for adoptions under the Adoption of Children Act). Adoption orders may include an authorized change of name.

103. Under the Constitution, all children born in Tuvalu are citizens from birth, with the exception of children of non-citizen diplomats and children born in occupied territory whose parent’s country of citizenship is at war with Tuvalu. Children born outside of Tuvalu have the right to citizenship if on the date of birth either parent is, or would be but for his or her death, a citizen of Tuvalu. There is no discrimination in the acquisition of nationality.

104. Only adults are able to acquire citizenship by naturalisation.³⁴

(ii) *Policy and Practice*

105. In practice, the nurse attending the birth of a child completes a Birth Notification Form, giving a copy to the parents for registration purposes. The nurse instructs the parents to take the form to the Kaupule (on the outer islands) or the Birth Registry (in Funafuti).

³³ Tuvalu Government National Budget 2009, Program Descriptions.

³⁴ Citizenship Act, s.6.

However, it is apparent from the Registrar-General's records that many, if not most, births are not registered by parents. For example, in 2006, 75 births were registered by parents in Funafuti, whereas hospital records listed 213 births. Consequently, the Registrar-General obtains birth records from the hospital on an annual basis to ensure that all births in Funafuti are registered. The information contained in the hospital records is sufficient for the purposes of ensuring a child's name and nationality, although it excludes some information required under the legislation (parents' occupations, siblings). It is not known whether those few births occurring on the outer islands are effectively registered.

106. As a result of the cooperation between the Registrar-General and the Ministry of Health (rather than registration by parents), it is believed that birth registration is at or close to 100% coverage. The figures however vary from island to island.

2. Preservation of identity

Article 8

(i) *Principal legal measures*

107. A child is able to acquire the nationality of both parents without restriction (i.e. Tuvaluan citizenship through one parent and foreign citizenship through another). There are no grounds upon which a child who is a Tuvaluan citizen may be deprived of that citizenship. However, upon attaining the age of 18 years, a citizen may not maintain Tuvaluan citizenship if he or she exercises a right of citizenship or affirms allegiance to another country, or obtains another country's citizenship.³⁵

108. A child's name may not be changed except as authorized by a court of law, such as in an adoption proceeding. When a child's name is changed, the previous name is not removed from the birth registry.³⁶

109. While the unlawful interference with a child's right to preserve his or her identity is not an offence in Tuvalu, the fundamental rights and freedoms (of expression, belief, assembly, association, non-discrimination) in the Bills of Rights provide protection for a child's culture and identity.

3. Freedom of expression

Article 13

(i) *Principal legal measures*

110. The right to freedom of expression is enshrined in the Bill of Rights in the Constitution (s. 24). This right includes the freedom to hold opinions without interference, freedom to receive and communicate ideas and information without interference, and freedom from interference with correspondence.

111. A child's freedom of expression may be restricted by law to the extent that it operates in the interests of defence, public safety, public order, public morality or public health, or for the purpose of protecting the reputations, rights, freedoms and privacy of others (s. 24(3)). A child's freedom of expression may be restricted (whether or not by law)

³⁵ Citizenship Act, s.7.

³⁶ Births, Deaths and Marriages Registration Act, Adoption of Children Act.

during a period of public emergency (s.36). These restrictions are consistent with Article 13 of the CRC.

112. In addition, a law that regulates or restricts the communication of opinions, ideas and information is deemed not to infringe the right to freedom of expression if the exercise of that right may be divisive, unsettling or offensive to the people or may directly threaten Tuvaluan values or culture, provided the law is reasonably justifiable in a democratic society (s. 24(1)(b), 29). Tuvaluan values are described in the Constitution as maintenance of traditional forms of communities, the strength and support of the family, and family discipline.

(ii) *Policy and Practice*

113. Children's freedom of expression is encouraged by the government-run media and the education system.

114. Tuvalu Radio broadcasts a 15-minute daily programme in which young children are interviewed about their daily lives, loosely translated as "What do you have to say?" A similar programme is run on a weekly basis for youth.

115. Primary and secondary schools actively encourage the development of oral and written expression, as well as art. For example, The Funafuti Primary School, which has a population of 860 children, conducts children's art and poetry as part of its literacy programme. Children are encouraged to enter annual competitions in Tuvalu and art exhibitions abroad. The primary curriculum includes twice weekly or weekly periods for art. The secondary school has a trained arts teacher.

116. Children's views on the current curriculum received at the 2006 Children's Parliament was considered during the development of the curriculum framework in 2006 – 2009. Children from Fetuvalu and Motufoua secondary School participated in the National Strategic Sustainable Development workshop where Te Kakeega II was produced.

117. See chapter II, section C, subsection 4 for constraints on children's expression of their views in traditional decision-making.

4. Access to appropriate information

Article 17

(i) *Principal legal measures*

118. The Tuvalu Broadcasting Corporation Act was repealed in 2008. Local media is no longer governed by legislation.

119. The Cinemas and Films Act allows for restriction of film exhibition according to age. Under the Education Act, a publication may be declared unsuitable for use in schools by the Minister, after taking advice of the Educational Advisory Committee (s. 34). The import, distribution, production, exhibition or advertisement of obscene materials is an offence under the Penal Code (s.166). Children's access to injurious media is not otherwise controlled.

(ii) *Policy and Practice*

120. Tuvalu Media has been re-established as a government department within the Office of the Prime Minister. Tuvalu media presently operates an FM radio broadcasting service for 79 hours a week. It provides a mix of programmes including news, government and

NGO programme material, religious broadcasts, children's programming, community messages and advertisements.

121. All broadcasting on Radio Tuvalu is in Tuvaluan, with the exception of news programming. World and Pacific news are sourced externally and broadcast in English, with some translation into Tuvaluan. National news is broadcast in both Tuvaluan and English. All government departments and NGOs have access to Tuvalu Radio for the purpose of broadcasting programme or other information; this access has been used for the benefit of children. For example, the Legal Literacy Project has provided a series of programmes on CEDAW and CRC; the Police Commissioner has broadcast a public warning after recent cases of incest; the Education and Health Departments have produced educational and public health messages. This year, the broadcast hours have been extended one hour into the school day, to facilitate the use of educational programming for the schools.

122. In preparing this CRC initial report, Nauti Primary School children were consulted on the issues around their right to leisure, education and adoption rights.

123. In addition to the interviews of children and youth mentioned in chapter I, section D, subsection 3 above, Radio Tuvalu presents storytelling for children, "Tala mo Tamaliki", every evening. This includes traditional myths, legends and stories, as well as those from religion or from other countries translated into Tuvaluan. On Saturdays, Radio Tuvalu broadcasts a music programme for youth. To connect children with their culture, interviews of older people are also presented on a regular basis, in which they discuss Tuvaluan history and traditions.

124. Prior to 2002, both AM and FM service were provided. With the loss of AM transmission in 2002, the outer islands have had unreliable reception. Funding has been secured to revive AM broadcasting ability, and it is anticipated that all Tuvaluans will have good radio access by 2011. Virtually every household in Tuvalu owns a radio.

125. Tuvalu Media stopped producing its newspaper in 2008 due to equipment failure and operational costs. The Tuvalu Association of Non-Governmental Organisations publishes a quarterly newsletter on community development. Churches and other associations produce newsletters for their membership. Newspapers from other countries are not available.

126. All schools have libraries, and there is a collection of children's books at the national library in Funafuti.

127. Internet service is available within the public service, and at several internet cafes in Funafuti. Internet service has recently become available on all the outer islands, initially at the Kaupules. The "one laptop one child" programme will soon provide laptop computers for secondary school students at the government secondary school (Motufoua), and will incorporate internet access. There is no restriction on internet access to foreign media in Tuvalu. There is also no effective limitation on access to violent, pornographic or otherwise injurious websites. For students at Motufoua, there is a plan to monitor the server and put in appropriate filters.

128. Sky Pacific television is available by satellite, to a small number of subscribers (presently 198, with most in Funafuti). A larger number, approximately one-third of households in Funafuti, have a television and video player.

129. The introduction of television, video and computer games has had a tremendous impact on the people. The children, in particular, impersonate main actors and actresses in movies and adopt behaviours, such as smoking and drinking. This poses a challenge to efforts to reduce such behaviours and maintain traditional values in the communities.

5. Freedom of thought, conscience and religion

Article 14

(i) *Principal legal measures*

130. Freedom of belief is a fundamental freedom in the Bill of Rights, and is defined to include freedom of thought, religion and belief, freedom to change religion or belief, and freedom to show and to spread a religion or belief in worship, teaching, practice and observance (s.23).

131. A child's freedom of belief may be restricted by law to the extent that it operates in the interests of defence, public safety, public order, public morality or public health, or for the purpose of protecting the rights or freedoms of others (s. 23(6)). A child's freedom of belief may be restricted (whether or not by law) during a period of public emergency (s.36). These restrictions are consistent with Article 14 of the CRC.

132. In addition, a law that regulates or restricts the right to spread beliefs is deemed not to infringe the right to freedom of belief if the exercise of that right may be divisive, unsettling or offensive to the people or may directly threaten Tuvaluan values or culture, provided the law is reasonably justifiable in a democratic society (s.23(1)(b), 29).

133. With respect to children, the Bill of Rights specifically states that a student cannot be compelled to receive religious instruction at school, or take part in a religious ceremony or observance of a religion other than his or her own, without his or her consent (s.23(4)). The Education Act requires schools to provide religious instruction, but allows a parent to excuse the child from such instruction (s.19).

134. Section 123 of the Penal Code creates the offence of Insult to Religion of any Class. The offence is committed if a person destroys, damages or defiles any place of worship or object which is held sacred by any class of persons, with the intention of insulting the religion of any class of persons. Additional offences include disturbing religious assemblies, trespassing on burial places, hindering burial, and using words or gestures to wound religious feelings (s. 124 to 127).

(ii) *Policy and Practice*

135. The Ekalesia Kelisiano Tuvalu (EKT) Church, a protestant denomination, is dominant in Tuvalu, counting over 90 percent of Tuvaluans as members. A small number of other Christian religions have up to three hundred adherents in Tuvalu, and there is also a tiny Muslim community in Funafuti.

136. The strong role of the EKT in traditional island communities has led to restriction by the traditional island assembly (Falekaupule) on the public practice of new religions on one of the outer islands. The termination of Kaupule employees on the basis of involvement with the Brethren Church resulted in a successful wrongful dismissal claim.³⁷ However, the Falekaupule's restriction on religious practices was not found to be an unconstitutional breach of fundamental freedoms of expression, belief or assembly in light of its purpose in protecting traditional culture.³⁸ This decision of the High Court has been under appeal to the Court of Appeal for the past three years, awaiting the establishment of this Court; it is anticipated that the Court of Appeal will be convened in September 2009. Additional

³⁷ Lamese v Nanumaga [2008] TVHC 7; Case 3 of 2006 (27 August 2008).

³⁸ Teonea v Kaupule [2005] TVHC 2; HC CC No 23 of 2003 (11 October 2005), under appeal.

litigation relating to the Falekaupule's restriction on religious practices is also pending before the High Court.

6. Freedom of association and of peaceful assembly

Article 15

(i) Principal legal measures

137. Freedom of assembly and association is a fundamental freedom in the Bill of Rights, and is defined to include the right to assemble freely and to associate with other persons, the right to form or belong to political parties, and the right, as regulated by law, to form or belong to trade unions or other associations for the protection or advancement of one's interests (s. 25).

138. A child's freedom of assembly and association may be restricted by law to the extent that it operates in the interests of defence, public safety, public order, public morality or public health, or for the purpose of protecting the rights or freedoms of others (s. 23(6)). A child's freedom of assembly and association may be restricted (whether or not by law) during a period of public emergency (s.36). These restrictions are consistent with Article 15 of the CRC.

(ii) Policy and Practice

139. In practice, many children in Tuvalu belong to various youth and church groups and they are free to assemble and associate with other persons in a range of communal and family activities. Refer to chapter II, section D, subsection 5 regarding the current restriction on assembly of the Brethren Church on Nanumaga.

7. Protection of privacy

Article 16

(i) Principal legal measures

140. The right to privacy in the Bill of Rights includes the right not to be subjected to the search of one's person or property, or entry by others on one's property (s.21). This right may be limited by lawful measures for such matters as government inspection, court-ordered entry, law enforcement, and other measures to protect the rights or freedoms of others.

141. While the Constitution requires court proceedings to generally be held in public except with the consent of all parties, it also allows for the exclusion of persons other than parties for reasons including the welfare of persons under the age of 18 (s. 22(12),(13))³⁹.

142. Libel is a misdemeanour offence under the Penal Code (s. 184, 185).

(ii) Policy and Practice

143. While not governed by legislation, it is the policy of both the Police Department and Tuvalu Media not to release or publish the names of young offenders or child victims of crime. However, the names of offenders under 18 are published in court proceedings and

³⁹ s22 - Protection of law.

the Attorney General's Office does not have any policy of limiting publicity or protecting the privacy of young offenders. Given the size of the community and the small number of serious crimes reported, such protections are largely symbolic.

144. The Department of Health maintains the confidentiality of patient records.

8. The right not to be subjected to torture or other cruel, inhuman or degrading treatment or punishment

Article 37 (a)

(i) Principal legal measures

145. The Constitution provides that no-one shall be tortured or given inhuman or degrading punishment or treatment (s.19).

146. The Constitutional right to life precludes the use of the death penalty (s. 16).

147. While an offender under the age of 18 may be sentenced to life in prison, there is the possibility of release under license or by power of mercy. Physical punishment as a criminal sentence is permitted only by the Island Courts. Refer to chapter II, section H, subsection 2 (c) for details on the sentencing of children.

148. "Reasonable" corporal punishment is not generally prohibited. The offence of cruelty to children in the Penal Code states "Nothing in this section shall be construed as affecting the right of any parent, teacher or other person, having the lawful control of a child of young person to administer reasonable punishment to him" (s.226). The Constitution envisages lawful corporal punishment by allowing a parent, teacher or guardian to detain a person under 18 for the purpose of education, welfare or proper discipline if authorized by legislation (s.17(2)).⁴⁰ For details on corporal punishment in schools, see chapter II, section G, subsection 1.

149. Corporal punishment is explicitly prohibited under the Mental Health Wing Management Regulations of the Mental Treatment Act (s.27).⁴¹

(ii) Policy and Practice

150. Corporal punishment in the home and school is considered an acceptable and effective means of disciplining children.

151. Corporal punishment is not practiced at the prison, although not explicitly prohibited. Amendments to prisons regulations, underway as part of a review of police and related legislation in 2009, are expected to include a specific prohibition.

152. Refer to chapter II, section H, subsection 2 (c) regarding the sentencing of children

9. Implementation Priorities and Specific Goals

153. As a means of facilitating access to information, Tuvalu Media has identified the goal of ensuring radio reception across Tuvalu via the extension of broadcasting services to

⁴⁰ s17(2) - Subsection (1) (g) applies in the following cases — (a) in the case of a person under the age of 18 years - in the reasonable exercise of the authority of a parent, teacher or guardian, or under the order of a court for the purpose of his education, welfare or proper discipline.

⁴¹ s27- Patients' letters.

include AM transmission, by 2011. The NACC has identified the need to address children's access to injurious materials on the internet and videotapes.

154. The Government has identified the establishment of the Court of Appeal in its programme and budget for the judiciary in 2009. This will facilitate the resolution of outstanding questions relating to the alleged infringements on religious and other freedoms by an island Kaupule and the cultural justification for such infringements.

155. In light of the irregularities in the birth registration process, the NACC has identified the need to regularize registration practices and/or revise the Births, Deaths and Marriages Registration Act to ensure an effective, practical system of birth registration. An improved registration procedure is also a performance target for the Attorney General's Office in the Government's budget for 2009.

E. Family environment and alternative care

1. Parental guidance

Article 5

(i) Principal legal measures

156. There are no restrictions on the parents' and extended family's ability to provide appropriate direction and guidance in the exercise of the child's rights.

(ii) Policy and Practice

157. In the review of police procedures presently underway, new arrest procedures for those under 18 include mechanisms to ensure that parents are informed when a child is arrested or charged with an offence.

2. Parental responsibilities

Article 18, paragraphs 1 and 2

(i) Principal legal measures

158. The Custody of Children Act, the Matrimonial Proceedings Act, the Native Lands Act and the Maintenance (Miscellaneous Provisions) Act form the legislative basis for family law in Tuvalu. While there is no legal presumption that contact with both parents is in the child's best interests, the inclusion of provisions for custody, access and maintenance underscore the principle that both parents have common responsibilities for the child. (see chapter II, section F, subsection 4) regarding the concern for the child's best interests in family legislation.

(ii) Policy and Practice

159. In Tuvalu tradition, both parents are responsible for their children, though the mother is expected to provide care directly to the child while the father is expected to provide the land, house and financial support. The government assists parents and guardians with their child-rearing responsibilities by providing formal education and assisting with the development of pre-schools. There are no daycare facilities for working parents, and limited maternity leave for mothers only (see chapter II, section F, subsection

4). Parenting education is not generally provided, although the Education Department does offer occasional workshops for parents on a variety of issues.

3. Separation from parents

Article 9

(i) *Principal legal measures*

160. A child may only be separated from his or her parents pursuant to criminal, immigration or mental health proceedings, or otherwise by a court of law. A child may be separated from one parent where the parents are living separately, in which case the child's residence may be determined by the court pursuant to the relevant family law legislation.

161. There is no formal procedure for separation in the case of abuse or neglect, except in the specific circumstances of a parent or guardian's encouragement of the seduction, prostitution or detention of a girl under 18, incest, and when a young offender is in need of protection (Penal Code, s. 144, 156, 39)⁴².

162. There are no legal measures regarding the opportunity to participate in proceedings relating to the child's separation from his or her parents, or the right to maintain contact with both parents.

(ii) *Policy and Practice*

163. In Tuvalu, there are no formal alternate forms of care, such as institutional or foster care, for children in need of protection.

164. Separation resulting from government action only occurs in the case of imprisonment. With one police detachment on each island and one national prison, family members are aware of the location of the imprisoned parent or child. New legislation governing police procedures proposes to require the police to inform a parent or guardian of a child's whereabouts upon arrest.

4. Family reunification

Article 10

(i) *Principal legal measures*

165. The Bill of Rights in the Constitution provides for freedom of movement for all Tuvaluans, including the right to leave and enter the country freely, subject to various public interests or in order to secure fulfillment of a legal obligation (s.26).

(ii) *Policy and Practice*

166. Subject to his or her imprisonment or other extenuating circumstances, any child in Tuvalu is able to leave the country for the purpose of family reunification. There is no requirement to obtain official permission.

167. For entry to Tuvalu, visitor's and residency permits are granted at the discretion of the Principal Immigration Officer. Spouses and children of resident foreigners are routinely

⁴² S39- Offenders under the age of 16 years, s144- Authority of court as to custody of girls, s156- Incest.

admitted for the purpose of family reunification and residency. Visitor's permits are generally granted upon landing in Funafuti.

5. Recovery of maintenance for the child

Article 27, paragraph 4

Principal legal measures

168. Maintenance orders for children up to the age of 18 may be made under the Custody of Children Act, the Matrimonial Proceedings Act and the Native Lands Act. The Maintenance (Miscellaneous Provisions) Act allows maintenance declarations and enforcement orders to be made where there is a legal or customary maintenance obligation.

169. The Maintenance (Miscellaneous Provisions) Act also includes provisions for the reciprocal enforcement of maintenance orders with England, Ireland and "other British possessions". The latter are set out in the Maintenance Orders (Facilities for Enforcement) Rules, and purport to include New Zealand, Australia, Fiji, Solomon Islands, Western Samoa, Papua New Guinea, Jersey and Guernsey. The validity of this outdated legislation has not been determined.

170. Tuvalu has not acceded to any international agreements relating to the recovery of maintenance abroad.

6. Children deprived of a family environment

Article 20

(i) *Principal legal measures*

171. There is no legislation requiring the government to provide such care and protection as is necessary for the welfare of a child where it is not otherwise being provided.

(ii) *Policy and Practice*

172. The government does not ensure or offer alternative care for a child deprived of his or her family environment. In Tuvalu culture, the extended family cares for the child when the parents cannot. In light of this traditional responsibility, there are no homeless children in Tuvalu. Adoption is available as described in II.E.7. Also traditional adoptions of children is common especially on occasions where there are too many small children in a family and it is also a way of bringing the ties closer between couples or close friends.

7. Adoption

Article 21

(i) *Principal legal measures*

173. The Adoption of Children Act (1985) governs all non-native and inter-country adoptions, as well as native adoptions at the option of the parties (typically when they plan to travel overseas with the child). The best interests of the child are the paramount consideration in adoptions ordered under the Adoption of Children Act. Under this legislation, the parents and the child if over ten years, must give consent to the adoption. Counselling is not required.

174. Native adoptions may be granted under the Native Lands Act in accordance with customary law. Pursuant to the Laws of Tuvalu Act, the court may take matters of customary law of its own motion and use sources other than the usual legal sources in determining the nature and extent of custom in a particular case.

175. The Native Lands Act does not require consideration of the best interests or views of the child, nor consent of those concerned. This Act permits the annulment of an adoption where the child is not dutiful.

(ii) *Policy and Practice*

176. Adoption in Tuvalu takes place within the family, and occurs commonly. A child may be adopted by grandparents if his or her mother is a single adolescent or by an aunt and uncle if they do not have a boy, a girl, or any children at all. Other than the court proceeding, there is no government involvement in such adoptions, and no administrative procedures such as evaluation of the prospective parents, assessment of the child's interests, or monitoring of the placement. Such adoptions are considered private matters within the extended family. In many cases, no court order is obtained at all.

177. Tuvalu has no experience with anonymous inter-country or local adoption by people unknown to the community. Although the Adoption of Children Act allows for such adoptions, there is no procedure by which a stranger could apply to adopt a child in Tuvalu. The only known case in which non-Tuvaluans adopted a child was when expatriate physicians living in Tuvalu adopted a baby with the consent of the family; they lived together with the child in Tuvalu, but eventually moved with the child back to their home country.

8. Illicit transfer and non-return

Article 11

(i) *Principal legal measures*

178. Conveying a person beyond the limits of Tuvalu without that person's consent constitutes the felony offence of kidnapping under the Penal Code, subject to seven years in prison (s. 241, 242). It is a specific offence to take, detain or harbour a child under the age of 14 years with intent to deprive a parent or guardian of the child; however, a parent or other person who claims possession of such child in good faith may not be prosecuted (s. 246). It is also an offence to abduct an unmarried girl under the age of 15 years out of the possession and against the will of a parent or guardian (s. 247).

179. There are no provisions relating to a non-custodial parent leaving the jurisdiction with the child's consent but against the wishes of the custodial parent.

180. Tuvalu has not acceded to any international agreements relating to the return of children.

(ii) *Policy and Practice*

181. There are no border control practices in place in regard to preventing children from illegally being transferred to other countries. Immigration officers are not mandated or trained to detect such movements. Therefore, there is a high risk that Tuvalu children can be transferred illegally abroad.

182. The illicit transfer of children abroad has not been a significant issue in Tuvalu to date. In active custody proceedings, a court order may be made prohibiting a child to leave the country pending the completion of custody proceedings.⁴³

9. Abuse and neglect, including physical and psychological recovery and social reintegration

Articles 19 and 39

(i) *Principal legal measures*

183. Violence against and neglect of children is prohibited under the Penal Code in a variety of ways.

184. Offences such as assault, kidnapping, causing grievous harm, manslaughter and murder apply regardless of the age and gender of the victim.

185. Specific offences in relation to children include:

(a) Infanticide (s. 199)

(b) Cruelty to children (s. 226): A person over 15 with the custody, charge or care of any child under 15 is liable if he or she “willfully assaults, ill-treats, neglects, abandons, or exposes him, or causes or procures him to be assaulted, ill-treated, neglected, abandoned, or exposed in a manner likely to cause him unnecessary suffering or injury to health”. A failure to provide adequate food, clothing, medical aid or lodging is deemed to be such neglect. However, this provision is deemed not to affect the right of a person with lawful control of the child “to administer reasonable punishment”.

(c) Failure to supply necessities (s. 225): A head of a family responsible for a child under 15, or any person having charge of someone who can’t provide for himself or herself, may be liable if that person’s life or health is endangered.

(d) Disposing of minors under 15 for immoral purposes (s.141): for prostitution or unlawful sexual intercourse or unlawful or immoral purpose, by a parent or person having care of custody.

186. Offences protecting only females include:

(a) Rape (s. 128)

(b) Indecent assault on females (s. 133)

(c) Abduction of girls under 15 years, or under 18 years of age with intent to have sexual intercourse (s. 247, 132)

(d) Defilement of girls under 13, or between 13 and 15 years of age (s. 134, 135)

(e) Householder permitting such defilement (s. 138, 139)

(f) Conspiracy to defile (s. 149)

(g) Incest (s. 156): sexual intercourse with a granddaughter, daughter, sister or mother, regardless of consent. However, a female over the age of 15 who consents to sexual intercourse with her grandfather, father, brother or son is liable to the same punishment.

⁴³ Tepulolo v Pou [2005] TVHC 1; Case No 17 of 2003 (24 January 2005).

187. The court has the power to remove the authority over or guardianship of a girl where an offence relating to seduction, prostitution or unlawful detention has been caused, encouraged or favoured by a parent or guardian, or in the circumstances of incest (s.144, 156).

188. Indecent assault upon a male person (of any age) is a separate offence. Whereas rape of a girl may lead to life imprisonment, and indecent assault of females may be punished by 5 years in prison, indecent assault of a male is punishable by 7 years in prison.

189. The Penal Code (S226) and Constitution of Tuvalu allow parents and guardians to resort to the corporal punishment as a way of disciplining children. The practice in most schools in Tuvalu is that only the Principal or head-teacher/head-mistress of the schools are authorised to administer corporal punishment to students, as a last resort, in line with the strict terms of the Education Act cap 38.

(ii) *Policy and Practice*

190. The Tuvalu Police does not have data available on the numbers and types of offences in which children are victims. The Police Commissioner estimates that there have been seven cases of sexual offences against children over the past two years, representing an increase in such crimes. The Police Commissioner is not aware of any charges laid for cruelty to children. Research has not been undertaken on the prevalence of child abuse in Tuvalu.

191. The effective prosecution of crimes has occasionally been hindered by investigative and other delays, resulting in the dismissal of charges.⁴⁴ Protective and preventative measures are not presently available, but the government is in the process of revising police legislation. Proposed legislation governing police powers would give the police additional powers to investigate suspected domestic violence, including the use of police-imposed restraining orders for up to 72 hours.

192. It is the practice of the Ministry of Health to report suspected maltreatment of children to the police; the Director of Health could recall one such case in the past two years. It is the practice in the schools to record instances of suspected abuse, with possible action including referral for health care, reporting to police, or discussion with the family. No statistics are maintained on such incidents. For the category of children not yet attending primary school level there are also no measures yet provided to monitor abuse and neglect by parents and particularly in the case of single parents. Traditionally, young children were brought up in extended families environments living in close proximities. Extended members of these families kept a close check on any abuse on young children as well as all members of the extended families. Urbanisation in Tuvalu has compelled, for necessity, many young parents and their children to live in nuclear families making it all the more important for developing measures to safeguard the welfare of young children.

193. With respect to physical and psychological recovery and social reintegration, the government is unable to provide specialized rehabilitative measures for child victims of abuse and neglect. Basic health services are provided through the health system; while some counseling may be provided by nurses, the health system does not include social workers or psychologists. However, strengthening of mental health services through staff training is part of the Ministry of Health's current Strategic Plan.

⁴⁴ Regina v Setaga [2008] TVHC 3; Criminal Case 2 of 2008 (26 May 2008); R v Tauetia [2005] TVHC 10; Criminal Case 2 of 2005 (20 May 2005).

10. Periodic review of placement

Article 25

(i) *Principal legal measures*

194. Involuntary placement for care and treatment under the Mental Treatment Act continues until discharged at the discretion of the Medical Officer in Charge, or by any two members of the Visiting Committee if they believe the patient is detained without sufficient cause (s.36). The Medical Officer in Charge is required to visit each patient at least weekly, and the Visiting Committee is required to visit at least quarterly.

195. Appointment of an alternate guardian made by the court in the context of criminal proceedings (where a parent has encouraged the seduction, prostitution or unlawful detention of a girl under 18, per s. 144, or where an offender is in need of protection, per s. 39) may be reviewed by that court as necessary.

196. There are no other circumstances in which the authorities place a child for the treatment of his or her physical or mental health.

(ii) *Policy and Practice*

197. While data is not formally collected, the Director of Health, the Police Commissioner and the Attorney General's Office could not recall a single situation in which a child under 18 was involuntarily detained for medical treatment or in which a guardian was appointed pursuant to the Penal Code. Periodic review of placement is not a significant issue in light of the virtually complete lack of placement options provided by the government.

11. Implementation Priorities and Specific Goals

198. Within the purview of law reform (see chapter II, section C, subsection 5), the NACC has identified the review of family law legislation as a priority, with the specific goals of eliminating overlapping statutes, removing distinctions based on birth status, and developing legislation which respects the views and interests of children as well as Tuvalu custom.

199. The Police Department has identified the training of police on domestic violence as a priority. The NACC also notes the need to conduct research on the use of excessive force, neglect, and sexual abuse of children within the family. NACC proposes to develop consistent policies and record-keeping across its membership sectors, and to seek funding for the development of a research-based action plan on child abuse, including consideration of a requirement to report suspected abuse to police.

12. Specific statistical data

Table 2

Statistical Data concerning Children

<i>Indicator</i>	<i>Number</i>	<i>Source</i>
Homeless children	0	Police Dept, Health Dept, 2009.
Abused or neglected children taken into custody	0	Police Dept, 2009.
Children placed in foster care	0	No foster care

<i>Indicator</i>	<i>Number</i>	<i>Source</i>
Children placed in institutional care	0	Health Dept, 2009. There are no government institutions specifically established to care for children with special problems.
Children placed through domestic adoption, per year:		
a) under Adoption of Children Act;	7	Registrar-General 2008/09;
b) under Native Lands Act, urban;	13-26	Lands Court Funafuti 2005-8
c) under Native Lands Act, rural	No data	
Children entering or leaving through inter country adoption procedures	0	Immigration Dept, 2009.

F. Basic health and welfare

1. Survival and development

Article 6, paragraph 2

- (i) *Principal legal measures*
200. See chapter II, section C, subsection 3 above.
- (ii) *Institutional infrastructure, Policies and Programmes*
201. See chapter II, section F, subsection 3 below.

2. Disabled children

Article 23

- (i) *Principal legal measures*
202. Domestic law does not make any special provision for children with disabilities, with the exception of exempting from compulsory schooling disabled children for whom schooling would provide no substantial benefit.⁴⁵
203. Tuvalu is not a party to the Convention on the Rights of Persons with Disabilities.
- (ii) *Institutional infrastructure, Policies and Programmes*
204. There is no formal infrastructure for children with disabilities, and a lack of data available regarding the numbers of disabled children and their needs. No monitoring strategies or mechanisms are in place. Disabled children in Tuvalu, though cared for, are not actively participating in community life. The data from the *Survey for the Elderly, Disabled and Employed in 2007* shows that there are 206 disabled people in Tuvalu (42% is

⁴⁵ Education (Compulsory Education) Order 1984.

female and 58% male), out of which 32% (66 children) fall between age 0 to 19 years old and 50 of the 66 children reported disability by birth. 13 of them are disabled due to sickness and only three (all are age between 10-19 years old) are due to injury. 55% of disabled people in Tuvalu by birth are children and teenagers. Disability due to sickness increases as age increases.

205. In the past, 18 physically disabled children in Funafuti attended a special education programme conducted by the Tuvalu Red Cross; however, this programme ceased several years ago due to a lack of financial and human resources. In Funafuti, a few physically disabled children attend the government primary school and are integrated into the regular school program. No transportation is provided, so only children who are able to get to school are eligible. Similarly, children with mild physical disabilities in the outer islands are able to attend the local primary schools. Children in primary school with learning disabilities remain in the class appropriate to their age. At present, two teachers are receiving training in special needs education overseas.

206. The Red Cross continues to offer home visits by a Health and Care Field Officer who, together with volunteers, helps parents to learn to care for their disabled children. The need for regular visits, especially for children born with hemiplegic and quadriplegic disabilities, has increased as parents are busy with chores and employment. Limited funding is a recurrent constraint on such activities. The Community Affairs department just submitted a report on disabled with the intention of formulating a policy on that so the government may implement measures favourable for their needs.

207. Tuvalu, as a member of the Pacific Islands Forum Secretariat, made a commitment to the Pacific Regional Agenda for addressing issues in basic education for children and youth with disabilities in 2002.

3. Health and health services

Article 24

(i) *Principal legal measures*

208. The provision of health services is not governed by legislation.

(ii) *Institutional infrastructure, Policies and Programmes*

209. The budget allocation for Ministry of Health in 2007, 2008 and 2009 are as shown in the below table. Although the relative allocation for Health is increasing from 10% in 2007 to 13% in 2009, the total expenditure on health remain low compared with Education.

Table 3

Summary of Total Government Expenditure by Head (2007-2009)

<i>Ministry</i>	<i>2007</i>	<i>2008</i>	<i>2009</i>
Health	10.4%	11.6%	12.8%

Source: Ministry of Finance, Economic Planning and Industries, Tuvalu

(iii) *Infrastructure*

210. Health care is provided free of charge to Tuvaluans, including medical care, oral health and medications. Reproductive, maternal and child health services are provided at the 50-bed Princess Margaret Hospital (PMH) in Funafuti and at health clinics on each of the outer islands. Reproductive health care is also provided at a youth clinic operated by the Tuvalu Family Health Association (TuFHA) in Funafuti. Tuvaluans may be sent overseas

for treatment if necessary, with funding allocated from the Tuvalu Medical Treatment Scheme (TMTS) or the New Zealand Medical Treatment Scheme.

211. The TMTS is offered only to Tuvalu citizens who reside in Tuvalu, as long as the Referral Committee, is satisfied that the patient's condition is such that it requires medical investigation and treatment overseas because they are not available in the country, provided the condition is treatable and the prognosis is good. The same applies to in-country referrals. In addition to in-country scheme, all prime mothers and pregnant mothers who have bad obstetric history are referred to the hospital on Funafuti. Accordingly, all children in Tuvalu have access to medical facilities and health care, to the maximum extent of available resources.

212. The budget is not specifically broken-down to each area of Maternal Child Health (MCH). Activities for MCH come under the Public Health and medical supplies budget allocations. These include items such as vaccines supplies, medical centre linen, etc. The estimated budgets allocated to MCH for 2007, 2008, and 2009 were AUD 6,300, AUD 5,300 and AUD 9,000 respectively, which is about 2-5% of the overall annual health budget.

213. PMH was expanded in 2003 and now provides a spacious, comfortable environment. Medical staff includes a paediatrician and obstetrician, as well as six other physicians (five doctors are Tuvaluans and three are Cuban expatriates). PMH is able to provide laboratory and ultrasound services, as well as emergency surgeries and Caesarean sections. Donor-funded teams of specialists visit annually.

214. The outer island clinics are staffed by a senior nurse/midwife, a second nurse, a nurse assistant (trained internally) and a sanitation officer. The Department of Health is in the process of rebuilding all the outer island health clinics, at a rate of two clinics per year. The new clinics will be 8-bed health centres for the larger islands, and 2-bed centres on the smaller islands.

215. Senior nurses in Funafuti and on the outer islands are trained in midwifery. All nurses are trained in the integrated management of childhood illnesses (IMCI). In-service trainings of two weeks' duration are held twice yearly in Funafuti to ensure annual attendance for the entire nursing staff. A full-time nurse educator has been employed to develop continuing medical education programmes; the Pacific Open Learning Centre is also now available for distance learning.

(iv) *Health Planning and Monitoring Strategies*

216. The Ministry of Health has recently completed its Strategic Plan for 2008-2018, with a mission to ensure the highest attainable standard of health for all people of Tuvalu. The Plan aims to improve the survival, development and health of children through improved facilities and staffing, as well as strong clinical, preventative and health promotion initiatives.

217. Two public health officers were engaged last year to develop an effective statistics management system, to enable the Ministry to monitor performance indicators.

(v) *Maternal care*

218. The number of births in Tuvalu has fluctuated between 156 and 231 over the years 1999 to 2008. The vast majority of women receive maternal care from a doctor, nurse or midwife, without significant differences between women in Funafuti and on the outer islands. Between 2002 and 2007, 97% of women received ante-natal care during their pregnancies; 98% delivered with the assistance of a health professional, and 93% delivered

at a health facility.⁴⁶ All first-time expectant mothers, and those with anticipated complications, are referred to deliver at PMH. This has facilitated the achievement of a low maternal mortality rate.

219. Ante-natal and post-natal care is provided to all mothers at PMH or at the island clinics.

220. Maternal tetanus toxoid injections during the mother's pregnancy are given routinely. Neonatal tetanus is estimated to be responsible for 1% of neonatal deaths.⁴⁷

221. The maternal mortality rate was approximately 5 per 1000 births, representing one death, in each of 1999 through 2003. The maternal mortality rate in 2008 was nil.

(vi) *Infant and child mortality*

222. As part of the millennium development goals (MDGs)⁴⁸, Tuvalu targeted a reduction of the infant and child mortality rates, as well as a decrease in child morbidity and an increase in immunisation rates.

223. The infant mortality rate was 41 (in a thousand live births) in 1991 and 31 in 2006, with fluctuations as high as 50 (1995) and as low as 15 (2001). In 2008, the infant mortality rate was 13.6, representing three deaths. The under-five child mortality rate was 59 in 1991, 38 in 2006 and 18 in 2008. Survey results are roughly consistent with this data, estimating infant mortality for the period 2002 to 2007 at 31 and under-five mortality for the same period at 36 in a thousand.⁴⁹ Given the small number of children born each year, a single death significantly affects the mortality rates. While there are gaps in the data available, the general trend has been toward decreasing infant and child mortality.

224. The predominant causes of neo-natal mortality were assessed in 2000, and included pre-term birth (36%), birth asphyxia (24%), severe infection (19%) and congenital anomalies (13%).⁵⁰

225. Major causes of child mortality and morbidity include diarrheal diseases and acute respiratory illness. Health promotion initiatives encourage parents to bring children in at an earlier stage of illness, and not to rely on the advice of traditional healers in the community. In addition to daily outpatient clinics at PMH, regular clinics are held for children's health matters and immunisation. Health clinics are also held at pre-schools, primary and secondary schools, ensuring that every child is seen at least once a year.

(vii) *Immunisation*

226. Immunisation rates have increased during the CRC reporting period from 1995 to 2007. BCG coverage has increased from 88% to 100%, DTP1 from 95% to 100%, DTP3 from 87% to 97%, Pol3 from 85% to 97%, MCV from 94% to 95% and HepB3 from 49% to 97%.⁵¹

227. Earlier difficulties in maintaining the cold chain for vaccines have largely been eliminated as a result of more regular transport services to the outer islands and improved

⁴⁶ Tuvalu Demographic and Health Survey 2007.

⁴⁷ World Health Organization Statistics for Tuvalu 2006.

⁴⁸ Tuvalu Millennium Development Goals Report 2006.

⁴⁹ Tuvalu Demographic and Health Survey 2007.

⁵⁰ World Health Organization Statistics 2006.

⁵¹ WHO/UNICEF Review of National Immunization Coverage 2008.

electricity generation on all islands. On some islands, vaccinations are routinely given immediately after they arrive by ship.

(viii) *Breastfeeding and Child Nutrition*

228. A National Policy on Breastfeeding and Infant Feeding has been in place since 1996, with nursing staff and a Nutrition Officer promoting exclusive breastfeeding from birth to 4-6 months at hospital, health clinic and on the radio. A recent health survey⁵² found 85% of mothers, breastfeeding their infants of up to six months, with 35% breastfeeding exclusively. Fifty-seven percent of mothers, breastfeed exclusively in the first three months. Over half of mothers continued to breastfeed after one year, and one-third after two years. In the government employment policy, the women employees are eligible to take full pay maternity leave up to 12 weeks and also to take two breaks per day to breastfeed her baby. The mothers and pregnant women in the public service commonly practice according to the policy. Ministry of Health promote breastfeeding. The Public Health Department holds annual activities during world breastfeeding week. The activities include health awareness training for mothers during antenatal clinic, training for health workers in the hospital, radio programs, and promotion of breastfeeding in the obstetric ward.

229. Low birth weight has not been considered a problem in Tuvalu, with a rate of 5% in 2000.⁵³ In 1996, a Situation Analysis of Women and Children identified over-nutrition as a major concern for infants, due to early supplementation, bottle feeding and overfeeding. Subsequently, the 2006 Situation Analysis considered over-nutrition to be less of a concern than poor nutrition in childhood due to a lack of fruit, vegetables and protein.⁵⁴

230. A recent income and expenditure survey⁵⁵ identified a fourteen-fold increase in household expenditure on food between 1994 and 2004, whereas household income did not even triple in that time period. Expenditure on food rose from 8% of the household budget to 47%. The implications of this data have not yet been assessed, but it suggests a continuing trend away from locally-grown food to more expensive imported goods. Changing food consumption patterns, from a traditional coconut/pulaka/breadfruit/fish/chicken/pork diet to a diet of rice, sugar, corned beef, imported chicken, tinned fish, butter and bread, has previously been identified as a health concern, leading to the development of a National Plan of Action for Nutrition in 1996. Efforts to encourage home gardening in Funafuti have been constrained by the lack of available land due to urban migration and overcrowding. Recent health initiatives have focused on improved nutrition as an element of non-communicable disease prevention.

231. A 2001-2002 study on helminthiasis among schoolchildren showed a prevalence of anaemia of 38.2% and 15.0% in two different schools. A 1991 study concluded that Vitamin A deficiency is not a significant public health problem.⁵⁶

⁵² Tuvalu Demographic and Health Survey 2007.

⁵³ WHO 2000.

⁵⁴ Situation Analysis of Women and Children 2006.

⁵⁵ Household Income and Expenditure Survey 2004/05.

⁵⁶ Nutrition Overview WHO 2000.

(ix) *Family Planning*

Table 4
Family Planning Visits by Island (2003 – 2006)

	2004	2005	2006
Nanumea	124	43	59
Nanumaga	53	65	77
Niutao	54	58	56
Nui	69	70	53
Vaitupu	190	46	80
Nukufetau	58	67	18
Funafuti	438	376	455
Nukulaelae	5	71	75
Total	991	796	873

Source: Ministry of Health

232. Family planning services are available from the TuFHA and PMH in Funafuti, and from nurses at the health clinics on the outer islands. Typically eleven types of modern family planning method are available and the use is closely monitored by the Ministry of Health. Devo Provera is the most popular method used by women in Tuvalu and in Funafuti, for example, it is followed by sterilization, Micro, M/lut, Ovu and Norplant. Approximately 30% of women of reproductive age use family planning methods.⁵⁷ A total fertility rate of 3.6 suggests that family planning services have been reasonably effective.⁵⁸

233. TuFHA provides education and training on family health and planning, working primarily with youth and island councils.

234. Family planning services are available to young people without recourse to their parents at both PMH and TuFHA. However, the teenage pregnancy is an issue in Tuvalu as shown in the Table below and Ministry of Health and TuFHA are working to improve the awareness among young people, particularly teenagers, on the risk of pregnancy, through more workshops for teenagers.

Table 5
Tuvalu 15-19 years old cases of Pregnancy

	2004	2005	2006	2007	2008
Nanumea	0	1	1	0	0
Niutao	0	0	0	0	1
Vaitupu	1				
Funafuti	11	16	13	6	15
Total	12	17	14	6	16

Source: Ministry of Health

Note: Those islands not shown have no case of teenage pregnancy.

⁵⁷ Ministry of Health; Tuvalu Demographic and Health Survey 2007.

⁵⁸ Ministry of Health.

(x) *HIV and AIDS*

235. To date, eleven cases of HIV infection have been reported, with the first in 1995. Nine contracted HIV overseas, including eight seafarers and one student, all reportedly through heterosexual contact. One seafarer transmitted HIV to his wife, who passed it on to her infant in the first case of mother to child transmission in Tuvalu.

236. In 1999, the Tuvalu National AIDS Committee was formed by the Ministry of Health and non-governmental organizations. The subsequent national strategic plan to combat HIV and AIDS (2001 to 2005) aimed to provide access to treatment, community education, voluntary testing and counselling, specialized education for youth and seafarers, a safe blood supply, and a coordinated, multi-sectoral response. During this period, HIV and AIDS education was incorporated into school curricula, a youth centre for reproductive health was established by TuFHA, a variety of community education activities were undertaken, specially-designed education for seafarers and their wives was initiated by the Tuvalu Red Cross, churches were involved in prevention, a national AIDS policy and clinical treatment team were established, and routine screening during pregnancy and of blood products was undertaken. The current national HIV strategy (2008 to 2012) focuses on four priority areas: achieving an enabling environment; prevention, including a prevention strategy specifically for youth; treatment, care and support, including a program of prevention of parent to child transmission; and effective program management.

(xi) *Environmental Health*

237. Regular access to safe drinking water poses an ongoing challenge. Four islands possess freshwater lenses which, though prone to seawater or other contamination, provide backup supply via community wells in times of low rainfall. The other islands, including Funafuti, have no fresh water supply.

238. Private rainwater storage tanks have been constructed for every household, along with communal tanks for village use. In order to supplement this supply and to bridge drought periods, desalination plants have been built on the main islands of Funafuti and Vaitupu (where the government secondary school is located). A water cistern storing up to 360,000 gallons of water was built under the government building in Funafuti in 2004.

239. Basic sanitation has improved from 1994 to 2004, with the percentage of households having flush septic tank toilets increasing from 30% to 67% in Funafuti and from 12% to 25% in the outer islands. In the outer islands, the percentage of households with any type of toilet increased from 74% to 90%.⁵⁹

240. All primary and secondary schools in Funafuti have access to improved water and sanitation. The situation on the outer islands' schools is similar to that on Funafuti, as a result of the 1992 – 2009 primary schools' upgrading project funded by the European Union.

(xii) *Traditional Practices*

241. There are no harmful traditional practices in Tuvalu such as female genital mutilation, scarification or nutritional taboos.

⁵⁹ Household Income and Expenditure Survey 2004/05.

(xiii) *Constraints*

242. Constraints in the area of basic health and welfare include the minimal infrastructure of the existing system; ageing physical infrastructure on the outer islands; the small population dispersed among remote islands; limited options for evacuation in emergency; the small number of health professionals, with a lack of back-up during absences; a shortage of diagnostic capacity; and a general lack of financial resources.

4. Social security and child care services and facilities**Articles 26 and 18, paragraph 3**(i) *Institutional infrastructure*

243. Government-funded social security in Tuvalu consists only of medical care. There is no scheme of social insurance or unemployment benefits in Tuvalu. Employers are legally mandated to provide maternity benefits to mothers and workers' compensation for injury.

244. Every child has the right to benefit from the medical care which is available free of charge to all Tuvaluans.

245. There are no daycare services for children of working parents in Tuvalu. Working parents rely on informal child care arrangements within the community, and on pre-schools and primary education for older children.

(ii) *Principal legal measures*

246. Pursuant to the Employment Act, mothers are entitled to approximately twelve weeks of maternity leave (six weeks prior to confinement and six weeks after). During her leave, her employer must pay her wages of not less than 25% of her usual pay. If employed by government, mothers receive full pay during maternity leave in practice. The Employment Act does not mandate the granting of parenting leave to fathers, sick leave to workers, or maximum hours of employment. Government employees work 35 to 40 hours a week.

247. The Workmen's Compensation Act provides for compensation by the employer for personal injury by accident arising out of employment. In fatal cases, the worker's dependants, including children, adopted children, stepchildren and grandchildren, are entitled to compensation directly.

5. Standard of living**Article 27, paragraphs 1 to 3**(i) *Principal legal measures*

248. There are no legal measures relating to an adequate standard of living.

(ii) *Institutional infrastructure, Policies and Programmes*

249. Tuvalu has not directly identified a minimum standard of living to secure children's development, but has taken initiatives to improve existing standards. Advances in primary health care, environmental health and education have targeted children's physical, mental, moral and social development. Health promotion initiatives include education and support to parents. Financial assistance for nutrition, clothing and housing is not available.

6. Implementation Priorities and Specific Goals

250. The Ministry of Health has identified the following specific goals relating to children:

- (a) Improved breastfeeding rates;
- (b) Reduction of childhood illnesses;
- (c) Reduced morbidity/mortality related to environmental factors;
- (d) Improvements in diet and physical activity levels;
- (e) Decreased rates of smoking and alcohol use;
- (f) Increased integration of health promotion activity.

251. The Department of Education has identified the provision of special needs education as a priority, including the development of an inclusive education policy. The NACC supports this goal and in addition seeks to have its membership collect data on the numbers and needs of children with physical and/or mental disabilities, with a view to developing a coordinated network of services for these children.

7. Inter-agency cooperation

252. There are established links between the Ministry of Health, the Department of Education, Tuvalu Media, the Red Cross, TuFHA and TANGO to coordinate efforts in the health sector. There are no national institutions of social workers or like bodies in Tuvalu.

G. Education, leisure and cultural activities

1. Education, including vocational training and guidance

Article 28

(i) *Principal legal measures*

253. The Education Act provides for the establishment of government schools and educational facilities, the registration of non-government schools, the registration or approval of teachers, and the granting of scholarships for secondary or tertiary education. An Educational Advisory Committee is established to advise and assist the Minister of Education.

254. The Education (Compulsory Education) Order (1984) made education compulsory from the beginning of the year that the child turns seven, to the end of the year that the child turns fifteen, effectively providing for nine years of compulsory schooling. A parent is liable to a penalty for non-compliance. "A child who is so badly physically handicapped or mentally retarded that, in the opinion of a medical officer, he would in the circumstances derive no substantial benefit from schooling or further schooling" is exempt from compulsory education.

255. The Education Act allows the Minister to charge fees for government schools and to prescribe fees for non-government schools, which may be remitted in part or whole. Motufoua Secondary School fee now is \$50 a term and there are no formal fees for the primary schools except as contributions for school equipments and facilities.)

256. The Education Act (Cap 38) permits corporal punishment of students by the head-teacher only, details of which must be recorded (s.29). The Minister may provide directions

for further controlling corporal punishment in schools (s. 29(3)), but has not done so to date.

257. All schools have policies and rules approved by the Ministry of education, which lay out the alternative punishments that they can follow to education offenders and address disciplinary cases they have, before resorting to corporal punishment and expulsion of students from schools.

(ii) *Institutional infrastructure, Policies and Programmes*

258. The budget allocation for Ministry of Education in 2007, 2008 and 2009 are as shown in the below table.

Table 6

Summary of Total Government Expenditure by Head (2007-2009)

<i>Ministry</i>	<i>2007</i>	<i>2008</i>	<i>2009</i>
Education and Sports	26.9%	24.3%	24.3%

Source: Ministry of Finance, Economic Planning and Industries, Tuvalu

(iii) *Pre-school education*

259. The Tuvalu National Pre-School Council coordinates the development of pre-schools in Tuvalu, which are managed by parents and the local community. There are currently 19 registered pre-schools, including two model pre-schools developed by the Department of Education. In the last decade pre-schools have been built with combined donor and government funding, with the local communities contributing labour and materials. While early childhood education has not been formally brought within the Department of Education as earlier anticipated, the Government, through interested donor governments and organizations, assists in the payment of the teachers' salaries, the construction of classrooms, provision of resources and curriculum advice, resources and teacher training. School fees and fundraising cover additional expenses.

260. In 2001, it was estimated that ninety percent of children between 3 and 5 years of age attended pre-school between six and ten hours per week.⁶⁰ In 2007, 655 children attended, representing over 90 percent.

261. A 20% increase in the number of qualified teachers between 2005 and 2007 (from 16 to 27) was made possible with the Pacific Pre-School Teachers Certificate upgrading programme offered over distance learning through the Tuvalu USP Centre.

262. A draft National Policy on Early Childhood Education was completed in 2007 and has been endorsed in principle by Cabinet. The policy regulates qualifications and salaries of teachers, size of centres, number of pupils, curriculum and recommended number of teaching and contact hours.

(iv) *Primary Education*

263. Primary education consists of 8 years of schooling, Class One through Six, and Forms 1 and 2. There are 9 government primary schools, one on each island, and a Seventh Day Adventist primary school in Funafuti.

⁶⁰ A Review of Tuvalu's National Early Childhood Care and Education Programme, 2001.

264. Although the legislation provides for nine years of compulsory education (from the year the child turns 7 to the year he or she turns 15), the Department of Education operates on the basis of ten years' compulsory education beginning in Class One (from the year the child turns 6 to the year he or she turns 15).⁶¹

265. Furthermore, it is the understanding within the Department of Education that primary education at government schools is free, despite the prescription of fees by law, as noted above. It appears that government policy was not translated into revised regulations. In practice, the schools ask parents to pay a small "school contribution", which is \$2 per term. In addition, parents must provide children with school uniforms, and purchase their notebooks and textbooks.

266. According to the 2002 Census, 99.9% of children between 6 and 13 (primary school age) attended school. There are presently approximately 2000 children attending primary schools across the country, with slightly more girls than boys (reflecting the population sex ratio). The teacher to student ratio has remained roughly consistent over the past 17 years, at approximately 1 teacher to 22 students, with higher ratios of 1 to 29 in 1995 and 1996.

(v) *Secondary Education*

267. Secondary education consists of 4 years of schooling, Forms 3 through 6.

268. The government-run Motufoua Secondary School is a boarding school on Vaitupu, with fees of \$50 per term (despite the prescribed rate noted above). A private secondary school, Fetuvalu Secondary School, operates in Funafuti and also charges \$50 per term. These fees are waived in cases of financial need as prescribed by policy.⁶² Toalipi scholarship award were available for Motufoua students who financially in need in the past. Niutao kaupule has been providing loans to the parents for the student fees in school. This is one of the initiatives implemented by the kaupule to ensure their children attend school.

269. There are presently approximately 460 children attending Motufoua and 178 children attending Fetuvalu (sex disaggregated data is not available). The teacher to student ratio at Motufoua has dropped from one to 17 in 1996 to one to 11 in 2008. All children attending Motufoua Secondary School are accommodated in the boarding facilities at school. In 2000, Motufoua's boarding school had a fire accident and 18 children had trapped in the fire. After the incident, the school had installed several safeguarding measures such as awareness among staff and children on emergency evacuation and rescue protocol and installation of fire extinguishers.

270. Between 1993 and 2003, the Education for Life program mandated that all children who completed primary education progressed to secondary school. However, by 2003 the government realised that providing secondary education for all children was beyond its means, and reintroduced an entrance examination to allow only academically capable students to proceed. Consequently, admittance to Motufoua Secondary School (public) is restricted to students who pass the National Year Eight (Form 2) Examination, a minority of students.

271. Education continues to be compulsory until the end of the year the child turns 15, generally two years after primary school. Consequently, children who fail the National Examination are required to repeat Form 2 and re-sit the examination until they pass or are no longer required to attend school at the age of 15. Alternatively, many children choose to

⁶¹ National Education Policy 2009 (Draft).

⁶² National Education Policy 2009 (Draft).

attend Fetuvalu Secondary School, which admits students who have completed primary education regardless of their examination results. Although few, those who failed to enrol in the secondary school (10%) help their family with their domestic chores. Most of the Tuvalu children, however, are either absorbed into Fetuvalu Secondary School or vocational programmes attached to the primary schools in both Funafuti and Outer-islands, which started in 2009.

272. The Government is committed to introducing different forms of secondary education, including technical and vocational education, as a means of making secondary education available and accessible to all children. An alternative vocational stream, with additional vocational courses, is beginning at Motufoua in 2009. This initiative is complemented by the planned re-establishment of Community Training Centres to provide the option of vocational training on each island; this would be an alternative to secondary school for children over the age of 14. Consultations and preliminary discussions are ongoing between the key stakeholders, Island Kaupule, and the Education Department on administrative structure and course content.

273. In the private vocational sector, the Maleta Kapane Halo Typing School teaches typing and clerical skills to students of secondary school age (as well as adults). However, the decreasing demand for qualified typists has significantly reduced the intake.

(vi) *Higher Education*

274. Approximately 60 young men (between 17 and 25 years of age) enter the Tuvalu Maritime Training Institute each year, with selection based on merit. Government funding for the Institute serves to reduce fees to \$100 for the year-long programme, which trains students as seafarers. At present, the Institute's dormitory facilities accommodate only young men; the Government is investigating how the Institute may be able to expand enrolment to include young women.

275. The Government of Tuvalu and several donor countries provide scholarship schemes for tertiary education and related secondary preparatory programmes. The Augmented Foundation Programme, equivalent to Form 7 and required for tertiary programmes, is available at the University of the South Pacific Extension Centre in Funafuti. The first year of the Early Childhood Care Education programme is also offered at the Extension Centre. Otherwise, Tuvaluans must leave the country for tertiary education.

(vii) *Educational and vocational information and guidance*

276. At Motufoua, the principal is responsible for informing and guiding secondary students in their educational choices. The Government department administering post-secondary scholarships provides vocational counselling to students upon acceptance.

(viii) *Measures to encourage regular attendance and the reduction of drop-out rates*

277. Kaupule and School Committee, which composed of teachers, parents and a representative from Kaupule, assist primary schools to ensure that students attend school regularly. The parents whose children do not attend school are noted and reported to appropriate authorities. Secondary school teachers monitor their classes and report non-attendance to the principal, who addresses this matter.

278. According to the 2002 Census, school attendance drops significantly at the secondary level. At age 14, 89% of boys attended and 96% of girls, at age 15 these numbers dropped to 67% and 88%, and at age 16 they dropped further to 27% of boys and 41% of girls. Current data is not available, but it is expected that the drop-out rate has increased further following the reintroduction of the examination requirement in 2003.

279. In order to reduce the drop-out rate, the Department of Education is undertaking initiatives to expand vocational education (described above) and to improve students' success rates through increased monitoring and better quality of primary and secondary education (see below).

(ix) *Measures to improve the quality of education*

280. Regular school inspection of government and non-government schools is an important element of the government's programme for monitoring the quality of teaching and learning. The programme includes direct observation and evaluation of teaching methodology, extent of implementing prescribed curricula and pedagogical and teaching competency level. These measures are also avenues to provide the relevant technical support to schools, including intensive professional development workshops on teaching.

281. The Tuvalu Government recognizes that it is the quality of the persons who are educated and trained to teach that will determine the quality of learning in schools, and thereby the quality of school leavers who enter the work force, or who proceed to further education and training. In this sense the country's economic and social future is seen by Government to be significantly influenced by the quality of its teaching workforce. At present, all teachers must be registered (with a recognized teaching qualification) or otherwise approved by the Director of Education. Opportunities are provided for teachers to upgrade their qualifications. Where teachers have demonstrated their potential for future registration, priority is given to their upgrading. At the secondary level, all teachers are graduates of college or university education programmes.

282. Another important mechanism that is put in place to monitor and improve outcomes of learning is the Tuvalu Standardised Test of Achievement (TUSTA), an instrument specifically developed and designed to determine the standard of literacy and numeracy at certain levels at primary. Results retrieved and analysed for the pilot trials indicate that a high proportion of students are at a critical level of not having acquired the expected basic literacy and numeracy level set for Class 4 and Class 6, a trend that was also noted when tests were repeated 2 years later. TUSTA findings provide the Department of Education with adequate information to develop appropriate intervention mechanisms.

283. The Department of Education anticipates strengthening its monitoring function through the implementation of a Monitoring and Evaluation Framework, as set out in its Strategic Plan for 2006-2010. The Strategic Plan also places special emphasis on the encouragement of parental and community support for educational infrastructure and activities, as well as involvement in the classroom and extracurricular programmes.

(x) *School discipline*

284. While the Education Act has always limited corporal punishment to head teachers, in past practice other teachers also administered corporal punishment. Procedures have been brought in line with the Education Act since the 1990s. (However, on occasion a teacher is authorized in writing by parents to administer corporal punishment to an individual child.)

285. Individual schools establish their own disciplinary practices. While no formal directions or guidelines are in place, Ministerial control over head-teachers serves to ensure that corporal punishment is "reasonable" There have been some informal discussions among teachers and the ministry to control this practice. Although children may not favour the practice of caning at school, the community and education staff are largely supportive of this form of discipline.

286. Ministry of Education has been raising awareness among teachers and parents on the alternative method of disciplining children at school. The emphasis of education is to

develop children at their full potential yet the corporal punishment has been used as a way to ensure students learn and behave as expected by the Tuvalu society.

2. Aims of education

Article 29

(i) *Principal legal measures*

287. The Education Act provides for the development of national curricula and examinations for all schools in Tuvalu (s. 18). All schools must include religious instruction in the curriculum (s. 19).

(ii) *Institutional infrastructure, Policies and Programmes*

288. The Department of Education's Strategic Plan for 2006-2010 includes the development and review of national curriculum guidelines for early childhood, primary and secondary education. As part of this ongoing process, the Department is seeking to integrate respect for human rights and the environment within the curricula, as well as incorporation of health promotion and values education. Localization of a number of subject areas is targeted, so that students may better connect culturally with their education. The goal of curriculum reform is to prepare students for their social, economic and civic roles in the community, as well as to "ensure pride in the Tuvalu culture and languages and have a clear sense of national identity while also recognizing the increasing global environment in which they live and work."

289. In the current school curricula, Tuvalu culture and language are taught in all years. Participation in cultural activities, songs and dances is encouraged. Tuvaluan is the primary language of instruction for the first years of education, and continues to be used together with English throughout primary school. Ministry of Education also raises awareness among teachers and head-teachers on CRC through Capacity building workshops which are held twice yearly, empowering the teachers to raise similar awareness workshops within their communities upon their return to their respective islands. In 2008, Department of Education facilitated the participatory development of school policy at school, where children of each primary school had contributed to the formulation of their own school policy. Early in 2009, Women's Department held a weekly awareness radio broadcasting on CRC issue.

290. Respect for foreign civilisations is provided through the learning of history and geography of other countries.

291. Despite the legislative requirement, religious instruction is not provided in all government schools, although religious activity (such as prayer) occurs. The primary curriculum includes values education, while the secondary school teaches religious studies in Forms 3, 4 and 5.

3. Leisure, recreation and cultural activities

Article 31

(i) *Principal legal measures*

292. While the Education Act allows the Minister to prescribe school hours and days, no regulation has been passed in this regard. There are no other legislative provisions relating to the right to leisure, recreation and cultural activities.

(ii) *Institutional infrastructure, Policies and Programmes*

293. In practice, the Department of Education sets the school terms each year, which includes forty weeks of instruction over 3 terms with two 2-week breaks and an 8-week break at Christmas. School hours are 4 to 4.5 hours (depending on grade level) with one half-hour break in primary school, and 7 hours with two breaks in secondary school.

294. Limited school hours allow for a lengthy period of rest and leisure each day. Children in Tuvalu spend their leisure time swimming, fishing, playing, watching videos or taking part in community or church activities. While active play is not encouraged during daily school breaks, school sports are held on a weekly basis. School arts classes are held once or twice weekly. In Funafuti and on the outer islands, sports fields are available for use by children and youth.

295. In addition, the government encourages opportunities for cultural and artistic life through support for special events, such as island community days, Independence Day celebrations, and Children's Day. The National Library in Funafuti maintains a collection of children's books.

4. Implementation Priorities and Specific Goals

296. The Government has identified as objectives for the Department of Sports in 2009 the incorporation of a physical education program into the education curricula, with more trained teachers in schools, along with improved sports facilities on all islands. It is a Government priority for the National Library to create "a learning, recreational and relaxing reading environment" in the library in Funafuti.

297. The Department of Education has identified curriculum reform, vocational programming, improving teacher quality and strengthening community partnerships as priorities in its Strategic Plan. A review of the Education Act is a specific goal.

298. The NACC echoes these priorities, noting in particular the need for law reform to reconcile discrepancies between education law and policy on the requirements for compulsory and free education, and to ensure that school discipline is effective and controlled. Department of Education efforts to improve the quality and range of education and to reduce drop-out rates should be supported by coordinated efforts across all sectors, and should include the development of a research-based plan of action. Increased secondary school attendance and improved standardized test results at all levels are specific goals.

5. Inter-agency cooperation

299. There are established links between the Department of Education, Tuvalu National Pre-school Council, Tuvalu National Council of Women, Tuvalu Girl Guides Association, Tuvalu Media, and the Tuvalu Teachers' Association to coordinate efforts in the education sector.

H. Special protection measures

1. Children in situations of emergency

(a) Refugee children

Article 22

300. Tuvalu is a party by succession to the Convention and Protocol relating to the Status of Refugees. Domestic legislation does not provide a specific process for claiming refugee status; the Immigration Act gives the Principal Immigration Officer discretion to grant a residency permit to any person.

301. No visitor to Tuvalu has ever requested refugee status. Given the geographical and economic circumstances, it is not anticipated that refugee children will arrive in Tuvalu in the foreseeable future.

302. In the context of climate change and rising sea level, Tuvalu people, especially the future generation, the children, are likely to be affected and there is a risk that they have to seek refuge in other countries for survival. New Zealand government had allowed the people from Tuvalu to work as seasonal workers under the Recognised Seasonal Employer Scheme (RSE). This scheme was open to the Pacific Island countries in 2002 and Tuvalu sent the first lot of workers under this scheme in 2007. These workers are expected to earn money and experience and return to their families in Tuvalu after their contract. Some have already sought settlement in New Zealand, while others returned to their families in Tuvalu.

(b) Children in armed conflicts

Article 38

303. Tuvalu does not have any armed forces other than its Police Force. The Police Act allows the responsible Minister to direct that the Police Force operate as a military force in times of emergency. The Government of Tuvalu also supplies two officers from the Police Force, on a rotating basis, to serve as peacekeepers with the Regional Assistance Mission in the Solomon Islands.

304. Police Regulations under the Police Act provide that those under the age of 18 may not be enrolled in the Police Force.

305. Tuvalu acceded to the four Geneva Conventions relating to armed conflict, in 1981.

306. To date, children in Tuvalu have not been directly involved in an armed conflict.

2. Children in conflict with the law

(a) The administration of juvenile justice

Article 40

a. Principal legal measures

307. There is no separate justice system for young offenders in Tuvalu. All people in Tuvalu are guaranteed protection of the law under the Bill of Rights in the Constitution, which includes the right:

(a) Not to be convicted of an offence on account of an act that was not at the time of the doing of the act, an offence or a legal element of an offence (s.22(6));

(b) To be presumed innocent until he or she is proved guilty, or has pleaded guilty and the plea has been accepted by the court (s. 22(3)(a));

(c) To be informed as soon as practicable, in detail and in a language that he or she understands, of the precise nature and particulars of the offence charged, and if the information is not given in writing it shall be confirmed in writing as soon as practicable (s. 22(3)(b));

(d) To be given reasonable facilities to consult, at his own expense, a representative of his own choice, and to be permitted to defend himself before the court in person or, at his own expense, by a representative of his own choice (s. 22(3)(d),(e));

(e) To be given a fair hearing within a reasonable time by an independent and impartial court established by law (s.22(2));

(f) Not to be compelled to give evidence at the trial (s.22(10)); to examine, in person or by his representative, the witnesses called before the court by the prosecution and to obtain the attendance and carry out the examination of witnesses to testify on his behalf before the court on conditions no less advantageous than those applying to witnesses called by the prosecution (s.22(3)(f));

(g) To have without payment the assistance of a competent interpreter, if he cannot adequately understand the language used at the trial or any part of the trial (s.22(3)(g)).

308. The right to have a conviction and/or sentence reviewed by a higher court is established under the Island Courts Act, the Magistrates' Courts Act, the Superior Courts Act and the Constitution.

309. Protection of privacy in criminal proceedings is not guaranteed. The Constitution provides for court proceedings to be held in public but permits the court to exclude persons during interlocutory proceedings and in the interests of the welfare of persons under the age of 18 years (s. 22(13)). In practice, the name of a young offender is not released by the police or state media, but is published in the style of cause (see chapter II, section D, subsection 7). Proposed police legislation would require police officers to serve notices on those under 18 discreetly, and not at school or the workplace.

310. The Constitution does not guarantee the provision of free legal services. The Office of the People's Lawyer has been established to provide such services, including representation in criminal proceedings. The Office of the People's Lawyer Act allows for regulation of fees, "subject to no Tuvaluan person being deprived of legal advice or representation for inability to pay fees" (s.7). Fees for criminal defense service have not been prescribed and are, to date, provided free of charge.

311. As noted in chapter II, section B above, the Penal Code establishes a minimum age (10) below which children are presumed not to have the capacity to infringe the Code. Additional requirements are imposed for the culpability of children under 14, and boys under 12 are presumed incapable of sexual intercourse.

312. Measures available without resorting to judicial proceedings are not presently specified in law. Proposed police legislation would explicitly authorize the police to release an individual or administer a caution without laying charges, as is presently done in practice.

313. An alternative disposition to institutional care specifically for children is available under the Penal Code for those under 16 and “in need of care, protection and control” (s.39). In such circumstances, a court may commit the child to the care of a fit person (including a local government council, religious institution, welfare association or other organization) or order his or her parent or guardian to enter into a recognisance to exercise proper care and guardianship. The order or recognisance ends on the child’s 18th birthday or an earlier date if so ordered.

314. In addition, the Penal Code allows the High Court or a magistrate’s court to substitute a residence order in place of imprisonment, directing an offender (regardless of age) to reside in a particular place in Tuvalu for a period not exceeding one year (s.37). The Penal Code also allows a court to order that a parent or guardian pay a fine, costs or compensation in lieu of an accused person under the age of 16 (s. 39). Absolute and conditional discharges may be granted by any court (s.38).

315. Proposed amendments to the prisons legislation allow for the additional disposition of public work in lieu of imprisonment of less than six months.

316. Upcoming legislation governing police powers and procedures proposes special arrest procedures for children under 18, including a requirement that a friend, relative or lawyer be present during questioning, and that police advise a parent or guardian of a child’s arrest and whereabouts, or of a notice to appear on a criminal charge.

b. Policy and Practice

317. The right to a fair hearing within a reasonable time was recently exercised successfully by an individual who had been 13 at the time of the alleged offence, after a four-year delay in the criminal investigation.⁶³

318. Police statistics are not disaggregated by age or sex. The overwhelming majority of the over 2000 offences reported annually are traffic violations and by-law infractions. It is estimated that less than ten youth under the age of 18 have been arrested for Penal Code offences since Independence.

319. In practice, alternative dispositions such as committal to the care of a fit person or residence orders have not been used. Conditional discharge, requiring the offender to keep the peace for one to two years, is a common disposition generally.

⁶³ Regina v Setaga [2008] TVHC 3; Criminal Case 2 of 2008 (26 May 2008).

(b) Children deprived of their liberty*Article 37(b), (c), (d)***a. Principal legal measures**

320. Personal liberty is protected in the Constitution, and provides that no person shall be involuntarily detained except as authorized by law. Domestic law does not contain a principle that the detention of children shall be a last resort, used for the shortest appropriate period. This principle is reflected in proposed special arrest procedures for children, but in relation to the pre-trial period only.

321. Under the Island Courts Act, Island Courts are prohibited from imprisoning anyone under the age of 15 (s. 8(2),(3)). A child of 15 or 16 years may only be imprisoned, for a period up to 1 month, if no other consequence is appropriate (s. 8(3),(4)).

322. The Prisons Act permits the Superintendent of Prisons to direct the separation of detainees under the age of 16 from adults as far as the accommodations renders it practicable (s. 34). The Prisons Regulations under the Prisons Act require the officer in charge of the prison to “have special regard to juveniles and lunatic prisoners and take such steps as may be necessary to separate each class from the other and from other prisoners” (s. 45(28)).

323. The Prisons Act limits convicted prisoners to once weekly visits from up to three friends or family members, except by special order (s.53). All prisoners are to be given “reasonable opportunities” for outside communication (s.54). There is no restriction on correspondence, although Prisons Regulations provide that letters be screened and objectionable matters omitted.

324. A child may also be deprived of his or her liberty pursuant to the Mental Treatment Act. This Act allows a magistrate to commit a person of unsound mind, who is dangerous or not being care for, to the mental health wing of the hospital or to make other necessary arrangements (s. 8). Twice weekly visits are permitted.

325. The Constitutional protection of personal liberty includes the right to be brought without undue delay before a court and released unless the court orders continued detention in accordance with law. A person detained on suspicion of having committed an offence must be released (unconditionally or on reasonable conditions) if he or she is not tried within a reasonable time.

326. These protections do not extend to the deprivation of liberty permitted under the Mental Treatment Act. This Act sets out procedures for review of involuntary admissions; see chapter II, section E, subsection 10.

b. Policy and practice

327. With two cells for males and a national prison population generally ranging from one to ten prisoners, separation of juveniles is possible. In practice, this has not occurred; there are no records of any prisoners under sixteen. Reported cases record two individuals under 18 having been imprisoned, both at the age of 17.

328. While Tuvalu legislation does not require that detention of all offenders under 18 be a measure of last resort, the jurisprudence supports this principle. In quashing a sentence of 4 months imprisonment imposed upon a 17-year-old for trespassing, the High Court

advised caution in sentencing young offenders with few or no previous convictions to imprisonment.⁶⁴ In practice, a child in conflict with the law has rarely been deprived of his liberty.

(c) The sentencing of juveniles

Article 37(a)

329. Refer to chapter II, section D, subsection 8 regarding torture and capital punishment.

a. Principal legal measures

330. There remains a clause in the Island Courts Act (which dates back to the colonial era) permitting the court to order, in lieu of another sentence, a parent or guardian to cane a boy under the age of 17 (s. 8(8)). The number of strokes may not exceed 6 for a boy under 14, and 10 for a boy over 14 and under 17.

331. There is no restriction on the imposition of a life sentence for offences committed by a child under the age of 18. A life sentence is mandatory (regardless of age) for the offences of treason, instigating, invasion, piracy and murder.

332. Under the Prisons Act the responsible Minister may “at any time if he thinks fit release a prisoner on license subject to such conditions, if any, as the Minister may from time to time determine” (s. 51). The Superintendent of Prisons must report annually (or more frequently upon Ministerial direction) on the general condition of any prisoner serving a life sentence who was under the age of 21 when the offence was committed (s. 50).

333. In addition, the Constitution grants the power of mercy to the Head of State and her representative, the Governor-General, on the advice of the Cabinet (s. 80). A life sentence may thereby be delayed, reduced or remitted.

b. Policy and practice

334. While no data is maintained on sentencing of juveniles, the Police Department and Attorney General’s Office could not recall the caning provision in the Island Courts Act being used at any time since Independence.

335. In the single case of a youth sentenced to life in prison ten years ago in Tuvalu, neither release on licence nor power of mercy has been obtained. As noted by the High Court, there is no process by which cases are brought to the attention of the Cabinet and Governor-General for consideration of the exercise of the power of mercy.⁶⁵ Similarly, there is no process in place to ensure that the Minister responsible for prisons considers the possibility of release on licence on a periodic basis, applying established criteria and subject to judicial review. Consequently, the possibility of release from life imprisonment may be more theoretical than practical.

⁶⁴ Tuaga v R [2003] TVHC 6; Case No 03 of 2002 (17 February 2003); see also R v Batiala [2005] TVHC 7; Criminal Case 1 of 2005 (17 May 2005).

⁶⁵ Anderson v R [2003] TVHC 27; HC Crim Case No 5 of 2003 (26 September 2003).

(d) Physical and psychological recovery and social reintegration

Article 39 (See section E, subsection 9 above)

336. Tuvalu does not have any law or policy regarding the recovery and reintegration of children in conflict with the law. The Prisons Regulations require the officer in charge to “assist as far as possible in their rehabilitation on discharge” (s. 45(24)). There are no resources dedicated to prisoner rehabilitation. A chaplain visits the prison regularly with a view to improving character.

3. Children in situations of exploitation, including physical and psychological recovery and social reintegration

(a) Economic exploitation, including child labour

Article 32

a. Principal legal measures

337. The Constitution prohibits slavery and forced labour. Exceptions that may be applicable to children include labour required as a result of a sentence or court order, during a public emergency, in the reasonable exercise of a parent, teacher or guardian’s authority for those under 18, or as part of traditional, communal or civic obligations.

338. Forced or compulsory labour is also prohibited by the Employment Act, and subject to a fine of \$100 (s. 75). Work duties resulting from a conviction, work required in a public emergency, and labour on communal works lawfully required by local government are not considered forced or compulsory labour (s. 74).

339. Pursuant to the Employment Act, children under 14 are prohibited from employment. There are a variety of restrictions on hazardous employment for children between 14 and 18. Children under 15 may not work on a ship or in an industrial undertaking without Ministerial approval. Boys under 16 are prohibited from working in mines. Boys 16 to 18 are restricted from working in certain circumstances underground, on a ship, or at night, without certification or permission. All females are prohibited from working in mines or at night, with listed exceptions. Active recruitment of children under 18 is prohibited except for light work, with permission of the Commissioner of Labour and parental consent. Violations are subject to a fine of \$50.

340. Hours of work may be regulated by Order under the Employment Act; however, no such Order has been made. Conditions of work are not regulated, with the exception of exposure to radiation, and work in the Public Service.

b. Policy and Practice

341. The absolute prohibition on work before age 14 and the restrictions under 15 are roughly consistent with compulsory schooling up to age 15. Younger children are not encouraged to engage in any form of employment other than fund-raising activities organized by schools or communities with parent or guardian consent. Opportunities for employment are extremely limited in Tuvalu (see chapter I, section A) and there is no history of economic exploitation; there are no mines and few industrial undertakings, primarily government-owned. Those who fail to go to secondary school (10%) helps family with their domestic chores, whether they are girls or boys.

(b) Drug abuse*Article 33*

a. Principal legal measures

342. The import, production and export of identified narcotic drugs and psychotropic substances is prohibited, or restricted for medicinal uses, by the Dangerous Drugs Act. The illicit use of drugs is not directly regulated in Tuvalu.

343. As noted in chapter II, section B, children under 18 may not buy or drink alcohol.

b. Policy and practice

344. A 2006 Behavioural Surveillance Survey conducted among young people (ages 15-24) in Funafuti found that 5% of youth had used marijuana, but none had used any other drugs. There is no other data available on the illicit use of narcotic drugs and psychotropic substances. The Police Department has noted the recent import of marijuana from Fiji with 3 cases involving police; other drugs are not known to be used in Tuvalu, although it is acknowledged that border controls are unlikely to be effective in preventing their import. There is no known production of dangerous drugs in Tuvalu.

345. Alcohol abuse among youth is seen as an increasing problem in Tuvalu. In the 2006 Survey noted above, 41.6% of youth (15-24) drink alcohol, with an average of 4 cans per session.

346. The Ministry of Health's Adolescent Health Development and Reproductive Health Project, and the Tuvalu Association of NGOs' Youth Mental Health Programme both address youth behaviour, including alcohol and drug use.

(c) Sexual exploitation and sexual abuse*Article 34*

a. Principal legal measure

347. The Penal Code contains a variety of offences related to sexual exploitation, including sexual offences (see section E, subsection 9), procurement of girls into unlawful sexual intercourse or prostitution, use of premises for unlawful sexual intercourse or prostitution, living off the avails of prostitution and disposing of minors for immoral purposes (s. 128 to 155).

348. As noted in chapter II, section E, subsection 9, most sexual offences in the Penal Code serve to protect female victims; similarly, the Code assumes that prostitution is a female activity.

b. Policy and practice

349. See chapter II, section E, subsection 9. Sexual offences against children, though few in number are routinely prosecuted and offenders have been imprisoned. Though anecdotal, some complaints of incest were reported to Tuvalu National Council of Women. The recent cases of incest includes a man who was convicted of indecent assault performed on his 14 year-old stepdaughter in 2002,⁶⁶ another man who was convicted of raping his 16 year-old

⁶⁶ R v Teafua [2002] TVHC 2; Case No. 235 of 2002.

sister-in-law in 2003⁶⁷, and a young man who was convicted of incest alleged by his niece in 2008.⁶⁸

350. The 2006 Behavioural Surveillance Survey conducted among young people (ages 15-24) in Funafuti found only 1% of youth reporting sex with a commercial partner. In a surveillance survey of pregnant women undertaken at the same time, no women reported having sex for money or gifts. The Police Department has no record of interaction with a commercial sex trade in Funafuti, although the study finds out that the three youth in the Survey engaged commercial sex partners overseas. Given that the similar atoll Pacific country, Kiribati, reports a high level of incidence among young I-Kiribati women who engage in high-risk sexual activity with seafarers from abroad, there is a concern that similar incidences may exist among the Tuvaluan women. However, there is no report on such incidence to date. The government continues to raise awareness on this issue through Family Life Education, HIV and AID projects, and Peer education under Adolescent Health Development programmes. At school, the issues of risky behaviour and reproductive health education are discussed as part of the existing school curriculum such as Physical Education, Home Economics, Science and Biology.

351. The Judiciary and Ministry of Home Affair and Rural Development provide support to those who were victim of the exploitation and abuse. However those ministries require further strengthening of the judiciary and welfare system to properly safeguard the rights of the children. The Budget allocation of the Judiciary and Ministry of Home Affairs are shown below.

Table 7

Summary of Total Government Expenditure by Head (2007-2009)

<i>Ministry</i>	<i>2007</i>	<i>2008</i>	<i>2009</i>
Home Affairs and Rural development	6.9%	7.1%	7.1%
Judiciary	0.4%	0.4%	0.4%
Police, Prison and Immigration	4.0%	3.8%	3.8%

Source: Ministry of Finance, Economic Planning and Industries, Tuvalu

(d) Sale, trafficking and abduction

Article 35

a. Principal legal measures

352. The Penal Code prohibits the abduction of girls under 15 years (s. 247), as well as the abduction of girls under 18 years of age with intent to have unlawful sexual intercourse (s. 132). Kidnapping or abduction of any person to cause that person to be confined or subject to grievous harm, slavery or “unnatural lust” is a felony offence subject to seven or ten years’ imprisonment (s. 243, 244).

b. Policy and practice

353. Due to the unavailability of specific data on this cross-border control or international trafficking, there is a risk that Tuvaluan children will be abducted abroad. However, the small size of the population at any point of entry or exit from the country any such

⁶⁷ R v Palota [2003] TVHC 3; Case No. 237 of 2002.

⁶⁸ R v Teokila [2008] TVHC 2; Criminal Case 1 of 2008.

movement will be highly visible and could result in the immediate measures being made to address such an abuse should it occur.

(e) **Other forms of exploitation**

Article 36

354. Other forms of exploitation, such as media exploitation or inappropriate involvement in medical or scientific experimentation, are not present in Tuvalu.

4. Children belonging to a minority or an indigenous group

Article 30

(i) *Principal legal measures*

355. Refer to the fundamental freedoms in chapter II, section D.

(ii) *Policy and practice*

356. Members of the Brethren Church and Assembly of God, minority religions, have had the collective practise of their religion in Tuvalu (see chapter II, section D, subsection 5). The I-Kiribati linguistic minority resident on Nui retains the use of their language and culture.

5. Implementation Priorities and Specific Goals

357. The Government has identified the review and updating of police and prison legislation in its 2009 programme and budget for the Commissioner of Police; this process is underway.

358. The NACC has identified as a priority the development of special protections for children involved in the criminal justice system, as well as the maintenance of statistics to be maintained by the police and prison services, disaggregated by age and sex. In particular, NACC has identified the critical goal of ensuring a genuine possibility of release from life imprisonment for offenders who were under 18 at the time of the offence, through the implementation of regular, reviewable procedures for release on license by the Minister responsible for prisons. Measures for social reintegration should accompany provisions for release.

359. The NACC has also identified as a priority the development of updated drug laws and cross-sectoral programming to address issues of drug and alcohol abuse.

Annex

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