

TONGA CIVIL SOCIETY ORGANISATION (CSO) – HUMAN RIGHTS TASK FORCE (HRTF) UNIVERSAL PERIODIC REVIEW SUBMISSION

In 2010, a CSO Human Rights Taskforce (HRTF) was established amongst Civil Society Organizations in Tonga with the overall aim of prioritizing the mainstreaming of Human Rights into national and institutional operational policies. The CSO HRTF provides a platform for the dialogue and sharing of human rights good practices and challenges, not only amongst CSOs but also communicating these good practices to Government Ministries and Departments.

Members include the Civil Society Forum of Tonga (CSFT), Ma'a Fafine mo e Famili Inc (MFF), the Women and Children Crisis Centre (WCCC), Friendly Island Human Right and Democracy Movement (FIHRDM), Friendly Island Teachers Association (FITA), Tonga Women National Congress (TWNC), Tonga Leiti's Association (TLA) and other individual human rights defenders.

Apart from the MFF (formerly the Legal Literacy Project) all other members are collaborating for the first time in the submission of this joint HRTF submission to the second Tonga UPR process 15th Session (21 January – 1 February 2013).

CIVIL SOCIETY HUMAN RIGHTS TASK FORCE UPR TONGA REPORT

A. Description of Methodology and Broad Consultation Process

A CSO Human Rights Taskforce (HRTF) has been established amongst Civil Society Organizations in Tonga with the overall aim of prioritizing the mainstreaming of Human Rights into national and institutional operational policies. The CSO HRTF provides a platform for dialogue and sharing of human rights good practices and challenges, not only amongst CSOs but also communicating these good practices to Government Ministries and Departments. Consequently, the CSO HRTF collectively identified the UPR process as a critical and effective means of communicating human rights achievements in-country, as well as violations and continuing gaps that need urgent addressing. With the financial and technical support of regional and donor partners, namely the Secretariat of the Pacific Community Regional Rights Resource Centre (SPC RRRT) and the Pacific Island Forum Secretariat (PIFS) and the Office of the Human Rights Commission in Suva (OHCHR) and the AusAid Human Rights Grant, the following organizations as members of the CSO HRTF hereby submit this joint stakeholders report; the Civil Society Forum of Tonga (CSFT), Ma'a Fafine mo e Famili Inc (MFF), the Women and Children Crisis Centre (WCCC), Friendly Island Human Right and Democracy Movement (FIHRDM), Friendly Island Teachers Association (FITA) , Tonga Women National Congress (TWNC), Tonga Leiti's Association (TLA) and other individual human rights defenders.

B. Development since the previous review in background of the State under review and framework

Following the last review in 2008, the most significant achievement to begin in 2009 was the commencement of Tonga's Constitutional and Electoral Commission's public consultations and hearing petitions on democratic reform. The Government and nobles representatives in parliament selected the members of the Constitutional and Electoral Commission in late 2008 whose job was to determine the nature of political reforms to be put in place by 2010, which resulted in the first democratic elections held in November 2010.

Contrary to this achievement, the most disheartening backslide was the Sevele Government's announcement in September 2009 at the UN General Assembly that Tonga was not going to become a signatory to CEDAW despite several commitments of the government to do so prior to its announcement. The Tongan Legislative Assembly voted 18 to 1 with 4 abstentions not to ratify CEDAW. In announcing the decision not to ratify, the then Tongan Prime Minister Fred Sevele stated that ratification would *cut across our cultural and social heritage that makes up the Tongan way of life*. Furthermore, Tonga did not want to ratify with reservations or undertake a *'ratification of convenience.'* However, at the time of writing this report it has been reported that the government of the day have approved through cabinet to receive a re-submission for CEDAW ratification with reservations. The re-submission with reservations will be undertaken by Crown Law and has been proposed to be tabled in cabinet by the Minister of Education, Women's Affairs and Culture, Dr. 'Ana Taufe'ulungaki.

The set-up of the Royal Land Commission also paved the way for positive legal reform and recommendations to improve women's rights to land is seen as a significant step forward in regards to the almost 137 year old land tenure system.

Other positive legal reforms include Cabinet's approval to review the existing legislation on violence against women and children and the drafting of subsequent amendment for enactment during the 2012 Parliamentary session. Consultations have commenced including Members of the Legislature and Church Leaders – both of whom play an important role in passing laws in Tonga. The purpose of the consultations is designed to share the ideas and recommendations for a Stand Alone Comprehensive Legislation dealing with all forms of domestic violence in order to better protect the rights of victims of violence. It covers a review of documentation on Violence against women in Tonga and neighbouring countries. An extensive process for conducting wider community consultations will be held throughout the country once the draft bill is ready for public comment.

Dialogue has also progressed in the area of establishing a human rights mechanism in-country at a national level and this is evident in the participation of Tonga Government and CSO representatives in regional dialogues on the critical need for the set-up of either a national or regional mechanism. It is the view of the Government of the day that efforts are put towards creating a national human rights institution, however, there are concerns from the CSO HRTF that maintaining independence may prove arduous and therefore are more lenient towards the establishment of a regional mechanism to ensure non-interference by government.

An example is of the interference of government on judicial independence in 2010 where it decided to abolish the Judicial Services Commission and to repeal the Judicial Services Commission Act. We the CSO HRTF view this as an unconstitutional step undertaken by the government to demolish the integrity and the independence of the Judiciary in Tonga. The Government also made the first direct appointment of a judge by the executive government without the recommendation of the Attorney General or the Judicial Services Commission – which in our view guarantees future selection of an independent judiciary. Consequently, this does not comply with acceptable Constitutional principles and compromises the integrity of the Judiciary in Tonga. Also, the decision by the Cabinet not to support the appointment of independent prosecutors to prosecute matters regarding the sinking of the MV Ashika because of lack of funding.

Thematic Area One: Democratization and law reforms

1. Prior to the elections of 25 November 2010 the parliament of the Kingdom of Tonga comprised of a Privy Council, a Cabinet, a Legislative Assembly and a Judiciary.
2. The laws provided that the King held the power to appoint and dismiss members of the Cabinet at his prerogative. When the King was absent the Privy Council was reduced to a Cabinet and was presided by the Prime Minister.
3. The Legislative Assembly comprised of all Cabinet members (approximately 12 to 14 Ministers), nine representatives of the then 33-member Nobles' of the Realm and nine representatives of the people elected through universal suffrage.

4. The Judiciary is made up of a Court of Appeal, a Supreme Court and a Magistrate Court. The Judges are appointed by the Privy Council at the advice of the Minister for Justice.
5. In late 2010 the Parliament of the Kingdom of Tonga adopted a democratic reform to its political structure. The Parliament now comprises 17 members elected each by members of the 17 Electorate Constituencies.
6. A special provision of 9 seats is allocated for the now 40-member Nobles of the Realm elected amongst their peers. This allocation of power is not only undemocratic but is also vulnerable to manipulation of power.
7. The nobles of the realm receive a yearly remuneration taken from the taxpayers' money but with no clear job description. It is assumed that their most important responsibility is to live and advise people of their estates but many, if not all of them, have left their estates behind to live in their residences at the Capital Town of Nuku'alofa.
8. The legal maturity age for the common people is 21 years of age, unlike the legal maturity age for the nobles which is 18-years old. A condition that is in contrary to clause 4 of the Constitution which stipulates that all Tongans and non-Tongans are equal under the Laws of the Land.
9. The Constitution provides that the members of Parliament hold the power to nominate and elect the Prime Minister. The elected Prime Minister then appoints members of the Cabinet from within the members of the Parliament. He/she is also allowed to appoint four Cabinet members from outside parliament should he/she so sees fit to do so. These four members are allowed to cast votes on any other matter in the House except for a vote of no confidence.
10. Tonga is traditionally a patriarchal society where the most senior decision-making positions are held by males. This is indicative in the current members of Parliament where there is only one female member who was appointed from outside parliament with the powers vested in the Prime Minister. In the recent general elections of 2010 eleven (11) female candidates contested and were unsuccessful. Currently there is no provision in the Constitution or in any legislation that allows for temporary special measures for women's equal representation in parliament.
11. Electoral Boundaries Commission Act 2010 has divided the Kingdom into 17 electoral constituencies containing an equal number of residents. It is now result in constituency priorities rather than national priorities. This state of affairs encourages self-interest and individualism, forcing the representatives to focus and emphasize on each of their individual constituency and individual agendas (for re-election purpose) rather than putting emphasized focus on the national interest and address severe national problems.
12. The current Electoral Boundaries does not favour female candidates who are most often resident in their husband's constituency and therefore regarded as 'outsiders' rather than part of the original inhabitants of that particular constituency. It is also difficult for a female candidate to compete with a male candidate for one vote per constituency. As was evident in the last General Elections there was a lack of support for female candidates by political parties and hence working towards achieving gender equality in parliament is far from a reality.

13. Recommendations for Thematic Area One:

- (i) The CSO HRTF calls on Government as a matter of urgency to consider reviewing the nine allocated seats for the nobles and the law that allows and includes the nobles' representatives in electing the Prime Minister as they only represent a minority of the population.
- (ii) We call on Government to consider reviewing the maturity age for the nobles to be in line with the general maturity age of the common people.
- (iii) We call on Government to consider abolishing the remuneration package assigned for the nobles.
- (iv) We call on Government, as an affirmative action to consider setting up temporary special measures (TSM) or quotas for the women of Tonga in parliament.
- (v) We call on Government to consider returning to the previous electoral districts.

Thematic Area Two: Human Rights Issue (prevention of torture, freedom of expression, disabilities, anti-corruption)

1. Prevention of torture

Since the release of the last Stakeholders report to the UPR process in 2008, there have been no documented use of torture by the Police of the Defense Force published by the Legal Literacy Project (LLP) now the Ma'a Fafine mo e Famili (MFF). However, the release of the report by the LLP detailing police and the defense force torture on detainees following the 16 November 2006 riots resulted in prosecutions and even the dismissal of police and defense force staff.

2. Freedom of Expression

We note that as part of the Government's democratic political reforms, the Government of Tonga commissioned the Ministry of Information and Communications to commence the development of a draft Freedom of Information policy in January 2011. After extensive consultation with internal and external stakeholders Government launched the Freedom of Information policy on 28th June 2012 and this is a major step forward in addressing the long-acknowledged gaps in public reporting and disclosure of information. The Government ultimately intends to use the process as the basis for developing Freedom of Information legislation in the future.

3. Anti-corruption

Tonga passed the Anti-corruption Act in 2007 which authorizes the establishment of an Anti-corruption commission to deal with corruption in government; however government declared that the Act cannot be implemented due to financial constraints. This has raised public concern that it is not a priority to government since the current focus is on economic development. However, according to a report of Ministry of Communication and Information, Tonga is considering accession to the UN Convention against Corruption (UNCAC).

4. Right to Justice

The MV *Princess Ashika* was an inter-island ferry which operated in Tonga. The vessel was built in 1972, and began sailing the Tongan route on 7 July 2009 only to sink less than a month later on 5 August. Official figures released by Operation Ashika on August 19, 2009, confirmed that 54 men were rescued, and 74 persons were lost at sea. All women and children passengers lost their lives. These include two bodies recovered and 72 missing (68 passengers and 4 crew), including five foreign nationals. Two of the missing passengers remain unidentified.¹

An inquiry later found that *Princess Ashika* had not been surveyed prior to being purchased by the Tongan government and that unfavourable surveys by the Fiji Marine Board were not brought to the attention of the Tongan authorities. A survey was conducted by Tongan Ministry of Transport surveyors on arrival of the vessel in Tonga, however, despite their subsequent claims that they considered the vessel to be totally unseaworthy, they failed to stop operations of the vessel. None of the government ministers who approved the purchase of the *Princess Ashika* and allowed it to sail in its condition has been brought to justice. The *Taimi o Tonga* newspaper reported that the government has paid out \$T80,000 (\$US45,480) to almost all the families of those who drowned “in exchange for not pursuing any civil lawsuits against the government”.

A Royal Commission of Inquiry into the sinking, which held extensive hearings between October 2009 and March 2010, identified “systemic and individual failures” which caused the “easily preventable” tragedy. Its 630-page report condemned the SCP board and senior government officials and ministers—including then-Prime Minister Sevele and then-Transport Minister Karalus—for purchasing the *Princess Ashika* and allowing it to sail even though it was “unquestionably unseaworthy and in an appalling condition”.²

After the release of the Royal Commission’s report in April 2010, the government moved swiftly to ensure that no ministers would be held accountable. Prime Minister Sevele claimed that the report’s recommendations would be “addressed”, while denouncing the Commission for “permitting the introduction of politically-motivated irrelevances in its proceedings”.

Attorney-General John Cauchi resigned after the government refused to support his appointment of prosecutors from Australia and New Zealand to investigate criminal matters arising from the Commission’s inquiry. Cauchi told the Australian Broadcasting Corporation that the Government was “attempting to control [the] prosecution... to ensure that members of the cabinet and other people, who might be regarded as close friends or cronies, are not prosecuted”. Cauchi also said that Justice Robert Shuster—who presided over the *Ashika* trial—had been appointed to the Supreme Court without his recommendation. According to Cauchi, the government wanted to “control members of the judiciary, to dispose of them or to hire them as they see fit.”

5. Legal Aid

A legal aid policy was endorsed by the Ministry of Justice (MOJ) following the November 16th 2006 riots to assist those who needed legal advice and support, however the project has since ceased and there have been no attempts to revive legal aid support in Tonga in the last two years.

¹¹ Taken from the Royal Commission of Inquiry Report into the Sinking of the *MV Ashika* on August 5 2009

² Ibid

6. Recommendations for Thematic Area Two :

- (i) The CSO HRTF call on Government to ratify the UN Convention Against Torture
- (ii) We call on the effective implementation and execution by the Government of Tonga on the recommendations highlighted in the Commission's Report and for Government to ensure all victims have access to effective legal remedy
- (iii) We call on Government as a matter of urgent priority to implement the Anti-Corruption Commission and to ensure Anti-Corruption Commission is independent of Government.
- (iv) We call on Government to ensure that the Freedom of Information Policy develops into a Freedom of Information Act
- (v) We call on Government to revive legal aid support particularly for the most vulnerable members of the community who lack access to financial resources and technical legal advice based on their low income and economic status

Thematic Area Three: National Human Rights Institution

7. National Human Right Institution

There is no human rights institution in Tonga. There is no national body to monitor human rights violations and to document the same. The CSO HRTF acknowledges the importance of having such a national body as it can act as a coordination body that will oversee all HR issues within the country. It can also help to closely monitor UPR recommendations for Tonga.

At the same time, we note that the Government lacks the resources and technical skills to set up a national human rights institution. It will also take time to set up. Therefore, we support the idea of establishing a Regional Human Right Institution that operates independently and will allow sharing of expertise and resources.

8. Recommendation for Thematic Area Three:

- (i) The CSO HRTF recommend that Government urgently prioritizes the establishment of a Human Rights Institution

Thematic Area Four: Gender Equality

9. Tonga has committed itself to the following international/regional gender equality conventions /agreements: Beijing Platform for Action of Women (Sep 1995), Millennium Development Goals (Sep 2005), Commonwealth Plan of Action for Gender Equality 2005-2015 and the Revised Pacific Platform of Action for Gender Equality 2005-2015
10. The *Constitution of Tonga* prohibits discrimination based on class, religion, race but does not recognize discrimination based on gender.

11. The National Policy on Gender and Development was formulated in 2001, and subsequently in 2002, a Three Year Implementation Plan for Gender and Development 2003/4-2005/6 was prepared and more recently a review of the policy areas was undertaken in 2011/12. However, little budget has been allocated for the Plan, so it has not been implemented well. There are no laws relating to gender specifically, such as a prohibition on sexual discrimination
12. Government is not well versed with this Policy on Gender. It is not acknowledged in the current National Strategic Planning Framework 9 which came into operation in July 2009, hence Gender Equality is not a national priority and the result MDG goal 3 – Gender Equality & Empowerment of Women is off track as reported in the Tonga MDG 2nd Report 2010.
13. In September 2009, the government failed to ratify the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) in a conscious vote in parliament with only one member voting *for*.
14. There are no affirmative action policies to increase women's participation in parliament despite their low level of representation over the last 60 decades. Since 1951 when women were first given the right to vote and stand as candidates there have only ever been 4 elected women into parliament and three appointed. Almost one woman per decade.
15. Although women occupy almost 30% of the employment in the public sector, few are at the decision-making level. This translates to local government, national government, CEO, Executive Board positions. There are no female magistrates
16. There is no official system for supporting female workers with the exception of maternity leave for public servants. Public servants are entitled to maternity leave through a policy not a law. In the private sector, the majority of the companies do not give maternity leave, with some exceptional cases in which around 10 days leave is provided.
17. There is no minimal wage law. Over the last 30 years, the number of females in formal employment has increased almost fourfold. However, there has been little progress in the type of occupations that women are engaged in. Most women were and still are employed in unskilled menial work or subordinate positions and therefore are paid at the lower end of the scale.
18. An *employment bill* has been discussed in the Legislative Assembly, but not yet been approved. Thus there is no legal protection for any employees, male or female.
19. The current laws on violence against women are inadequate. There is no specific offence for stalking. The legislation does not allow for a restraining order for women for sexual or domestic violence regardless of their marital status. However, there are few provisions that may be applied for the protection of women in vulnerable or threatening situations. There is no specific offence that deals with domestic violence. DV has historically been treated by the police as a private and minor matter. Having a pro prosecution provision will ensure that if reported, such offences against women in vulnerable situation are taken seriously as other criminal offences by law enforcement agencies. However, the Police have implemented a domestic violence no drop policy.
20. The law on sexual offences defines rape as the unpermitted penetration of the penis into the vagina, and as such any other type of sexual abuse is not regarded or recognized as an offence. For example using objects or anal methods is not regarded as rape but rather sexual assault, having a lesser charge.

21. Cabinet has approved the review and drafting of a comprehensive bill on violence against women and girls which is to be tabled later this year. This is a critical development in-line with the recent National Study on Domestic Violence conducted by the Ma'a Fafine mo e Famili which noted a prevalence rate of 33% and increase of reports on domestic violence reported by the Ministry of Police and the Women and Children Crisis Centre.
22. The Government of Tonga, despite limited resources, made modest progress in its law enforcement efforts to address human trafficking. Tonga prohibits all forms of human trafficking through its Revised Transnational Crimes Act of 2007, which defines human trafficking as including forced labor and forced prostitution. This law prescribes up to 25 years' imprisonment for these offenses, which is sufficiently stringent and commensurate with penalties for other serious crimes, such as rape. In April 2011, the government, for the first time, sentenced a trafficking offender to prison.
23. However, the government has not taken action to reduce the demand for commercial sex acts or forced labor during the reporting period. Tonga is not a party to the 2000 UN TIP Protocol. Neither has the government enacted a law or established a policy that provides for explicit protections for victims of trafficking³
24. Reproductive Health Rights is still limited with wives needing the permission of their husbands or unmarried women requiring the signatures of a guardian before the procedure is undertaken by the national hospital
25. His Majesty King George Tupou V, in Council appointed a Royal Land Commission on 10th October 2008, pursuant to the Royal Commissions Act (Cap 41) Laws of Tonga, which empowers such appointment to inquire into matters of importance to the public welfare. The final report with its recommendations was released in June 2012 with recommendations to increase women's rights to land, more specifically for women to be allowed to register a town allotment. However this recommendation does not allow women to register bush allotments with the reasoning being that only men attend to the bush for agricultural purposes.

26. Recommendations for Thematic Area Four:

- (i) The CSO HRTF urges the Government of Tonga to include gender as a ground to prohibit discrimination in the Constitution of Tonga
- (ii) We call on Government to prioritize gender equality within its National Strategic Planning Framework
- (iii) We call on Government to ratify the UN CEDAW convention immediately
- (iv) We call on government to establish policies to increase women's participation at all formal decision making levels
- (v) We call on government to pass the Employment Act (bill) which addresses minimum wage, hours and protection of maternity rights and should also address paternity rights of employees and the rights of migrant workers.
- (vi) We call on government to urgently pass comprehensive legislation protecting women and children's rights under the Changing Laws and Protecting Women project

³2012 Trafficking in Persons Report – Tonga, United States Department of State, 19 June 2012

- (vii) We call on government to accede immediately to the 2000 UN TIP Protocol and consider drafting legislation or establishing policies around protecting the rights of victims of trafficking
- (viii) We call on the Ministry of Health to abolish this policy and give the women the right to choose her course of contraception
- (ix) We call on the Government to consider full rights of women to land registration

Thematic Area Five: Promotion and protection of human rights, education and public awareness

- 27. The CSO HRTF would like to commend the Ministry of Police who have since 2008, incorporated into their new police recruits training, the *International Human Rights Standards for Law Enforcement*.
- 28. We would also like to acknowledge the Ministry of Police's efforts to publically broadcast over the National Radio and Television the different types and forms of violence (physical, psychological and emotional) especially violence against women and children. We especially like to mention this as most people do not think that hitting is violence. The Police have also since 2010 been at the forefront of promoting *White Ribbon Day*.
- 29. We note that there is a No Drop Policy within the Ministry of Police however it is yet to be fully implemented across all frontline police at first-point-of contact with victims. Patriarchal attitudes and behaviours of most frontline police has a negative impact on the response services to female victims of violence and are inconsistent with the overall objective of the No Drop Policy. A Domestic Violence Response Policy (DVRP) for Tonga Police was drafted in 2010 and had been circulated amongst CSOs for their feedback and input. This was a positive step forward between the Tonga Police and CSOs working on the elimination of violence against women and girls. It is noted that the No Drop Policy and vast improvements to police response to DV was to be formalized within this new policy, however this policy is still in draft form.
- 30. We note that the Tonga Defense Services do not provide a complete Human Rights training package but they do mention the UDHR and also provide training on the International Humanitarian Law.
- 31. We note with increasing concern that the Government of Tonga and its line ministries have not consolidated a commitment to provide Human Rights training for the public officials.
- 32. We note that the Ministry of Education has just recently in January 2012 released in a new syllabus for Primary Education for Classes 1 to Form 2 (Class 8) and Human Rights was not incorporated into the syllabus. However the CSOs note that a new syllabus for the High Schools (Forms 3 to 7) is being drafted and that there has been consultation with independent consultants consisting of local lawyers and respected people in the community concerning the inclusion of Human Rights into the school syllabus. There are no Human Rights training offered at Higher Education and in the Tonga Institute of Education for Teachers. The CSOs note that this is a matter of urgent priority as the brawl between schools has escalated and the Minister of Education has banned the two Government High Schools from participating in the Inter-collegiate rugby competitions.

33. We note that four (4) members of the CSO HRTF provide Human Rights training as part of their mandates: The Ma'a Fafine mo e Famili (MFF), The Tonga Crisis Centre for Women and Children (WCCC) and the Friendly Islands Human Rights and Democracy Movement (FIHRDM) and the Civil Society Organisation of Tonga.

34. Recommendations for Thematic Area Five:

- (i) The CSO HRTF call on the Government of Tonga, as a matter of urgent priority, to incorporate Human Rights into the school syllabus.
- (ii) We call on the Government of Tonga, as a matter of urgent priority, to provide Human Rights training for the Government officials and especially for the senior police and those trained before 2008
- (iii) We call on the Ministry of Police to take immediate steps in formalizing the Domestic Violence Response Policy for Tonga Police

Thematic Area 6: Treaty ratifications, treaty reporting and overall work with human rights institutions

- 35. The CSO HRTF note that of the core UN human rights conventions, The Government of Tonga has ratified a few conventions to date; the UN Convention on the Elimination of Racial Discrimination (CERD), the UN Convention on the Rights of the Child (CRC) and have become a signatory to the UN Convention on the Rights of Persons with Disabilities (CRPD)
- 36. We note that to date the government has still not ratified the leading women's rights convention, the UN Convention on the Elimination of all Forms of Discrimination Against Women (CEDAW) and the UN Convention Against Torture (CAT) and the two core critical human rights Covenants the International Covenant on Economic, Social and Political Rights (ICESCR) and the International Covenant on Civil and Political Rights (ICCPR).
- 37. The CSO HRTF notes with concern that since the last UPR review in 2008, the Government has failed to make positive steps towards the ratification of the latter conventions and covenants mentioned above

38. Recommendations for Thematic Area Six:

- (i) The CSO HRTF urges the government of Tonga to immediately ratify the following; CEDAW (Convention on the Elimination of all forms of Discrimination Against Women) and CRPD (Convention on the Rights of Persons with Disability)
- (ii) We call on Government to fulfill its commitment to reporting on CRC and CERD and to work towards developing implementation plans for CRC, CERD , CEDAW and CRPD
- (iii) We call on the Government to consider ratifying the CEDAW optional protocol and the CRC optional protocol