

**Joint Submission of the UN Country Team for Tonga for the UN Compilation**

**Universal Periodic Review of Tonga**

**29<sup>th</sup> Session, Jan-Feb 2018**

*This submission is made by members of the UN in the Pacific who undertake work in Tonga. The submission provides available information and does not attempt to provide a comprehensive review of the human rights situation in Tonga. This report encourages the Government to use the outcomes of the second review to further the full realization of human rights in Tonga.*

## **I. BACKGROUND AND FRAMEWORK**

### **A. Scope of international obligations**

Despite the recommendations of the member States during the 2<sup>nd</sup> cycle of UPR to ratify core international human rights treaties, including ICCPR, ICESCR and CEDAW, no concrete progress has been made thus far; Tonga continues to remain among the two countries in the Pacific (Palau being the other) not to have ratified CEDAW.

In March 2015, the Cabinet approved CEDAW with certain reservations (regarding accession to the throne, nobility, abortion and same-sex marriage). However, progress has stalled due to public protest, particularly by women religious leaders associated with the church.

In February 2017, the Prime Minister called for public consultations on ratification with participation of local women's groups, given that the country has been divided over the subject.

Tonga is party only to CRC and CERD. Its 15<sup>th</sup> periodic report to the Committee on the Elimination of Racial Discrimination has been due since 17 May 2001, while Tonga has failed to submit its initial report to the Committee on the Rights of the Child, which has been pending since 1997.

In March 2017, the Ministry of Education and Training announced a short-term contract vacancy for a CRC National Consultant with a view to meeting its reporting obligations under CRC.

#### **Recommendations:**

- To ratify core international human rights treaties, including ICCPR, ICESCR and CEDAW.
- The UN in Pacific encourages the Government of Tonga to fulfill its reporting obligations under CERD and CRC and remains committed to providing necessary support for the same, including in the area of capacity enhancement.
- The UN in Pacific encourages the Government of Tonga to consider transforming existing ad hoc structures into a National Mechanism for Reporting and Follow-up with a view to engaging with UN human rights mechanisms in a constructive and systematic manner.

## **B. Constitutional and legislative framework**

Tonga held general elections in November 2014 that were deemed free and fair. All 26 legislators were elected to the unicameral Legislative Assembly-- 17 directly elected by citizens and nine from among 33 hereditary nobles. All Tongan citizens aged at least 21, other than noble title holders and members of the Royal Family who hold noble titles, were entitled to elect the people's representative for their constituency.

In May 2017, the Government proposed an amendment to the constitution with a provision empowering the Prime Minister to appoint the Attorney General, Police Commissioner and Anti-corruption Commissioner. Currently, such appointments are made by the privy council and the King of Tonga.

### **Recommendation:**

- To continue constitutional reform and amendments to widen the country's democratic space and respect for human rights.

## **C. Institutional and human rights infrastructure and policies**

Tonga has no national human rights institution. The Government continues to argue that they have been facing several constraints to create a national human rights institution, including lack of financial and human resources. However, in December 2016, Tonga established the Ombudsman's Office, which is responsible for investigating complaints related to administrative actions and decisions made by any public department, enterprise or other public body, or by any officer, including any Minister or Governor. Accountable to the Legislative Assembly, the Ombudsman accepts complaints from all persons.

The Commissioner for Public Relations (Amendment) Act, 2016 empowers the Ombudsman to act on his own volition as well. The current structure replaced Tonga's previous Office of the Commissioner for Public Relations, which was established as per the Commissioner for Public Relations Act, 2001.

### **Recommendations:**

- As a matter of priority, to establish a national human rights institution in compliance with the Paris Principles, as the current structure by no means corresponds to a NHRI in terms of scope, mandate and degree of independence.

## **I. PROMOTION AND PROTECTION OF HUMAN RIGHTS ON THE GROUND**

### **A. Cooperation with international human rights mechanisms**

On 25 January 2013, Tonga extended a standing invitation to all special procedures mandate holders. In 2016, the Working Group on the issue of discrimination against women in law and in practice asked to visit the country; this visit has yet to take place.

## **II. IMPLEMENTATION OF INTERNATIONAL HUMAN RIGHTS OBLIGATIONS**

### **A. Equality and non-discrimination**

Section 4 of the Constitution guarantees non-discrimination and equality for all citizens of Tonga. In 2014, the Government introduced the revised National Policy on Gender and Development, which focuses on promoting equal access, participation and distribution of benefits of the development process for all women, men and children. However, such measures have yet to be fully implemented.

Tonga passed its Family Protection Act, 2013, which incorporates provisions that enhance protection against domestic violence in several ways: , by preventing violence through increased awareness; granting greater power to police officers to provide protection to victims through the issuance of protection orders; providing health and mental health support and counseling to victims; imposing heavy penalties on offenders; and strengthening institutional response through the creation of the Family Protection Advisory Council under the Ministry of Internal Affairs. Despite this, progress towards achieving gender equality remains a challenge in the country.

Child marriage remains a critical issue in Tonga. According to Human Rights Watch, in only the past two years there occurred more than 100 marriages of children.<sup>1</sup> Girls have often been forced by their parents to marry-- in certain cases teenage pregnancy was involved; in others girls were forced into marriage simply because they were seen with boys. Local organizations have also documented

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Human Rights Watch, 2017, <https://www.hrw.org/news/2017/06/08/time-tonga-end-child-marriage>

cases in which girls were forced to marry their rapists. This has left many children, particularly girls, exposed to early pregnancy, thereby putting their and their babies' health at risk—even resulting in death at times. This has also resulted in an increased risk of domestic violence, including marital rape and emotional abuse, as well as leaving school permanently and thus depriving them of their right to education. Despite Tonga's being party to CRC, the marriage law in Tonga permits children to marry as early as 15 years of age with parental permission.

In March 2017, Tonga's Ministry of Justice partnered with a local women and child rights group to launch a campaign entitled "Let Girls be Girls" with the aim of putting an end to child marriage and calling for the repeal of the section of the constitution dealing with marriage law.

The economic and employment opportunities for women in Tonga represent another serious issue. Women's workforce participation is highest in the informal sector. Non-agricultural employment participation rates for women range between 30% and 50% throughout the region. Unemployment among women is typically higher in rural and remote outer islands. Gender discrimination in terms of wage and work conditions also remains an issue.

Owning land is very difficult for women in Tonga. The Land Act forbids them from inheriting land, which greatly limits their capacity to access financial services. Although some matriarchal land-tenure systems exist, in reality real control and management of land lies with brothers and other men of the clan. Tonga women seldom participate in decision-making related to development of land, and they are seldom able to benefit from such development.

As in other Pacific island countries, women's representation in the parliament of Tonga remains extremely low, amongst the lowest in the Pacific, with only a single woman represented. In 2009, the submission of the National Women's Council to the Constitution and Electoral Commission recommending an amendment to the Constitution to allow special temporary reserved seats or quotas for women in the Parliament was rejected. However, UN in the Pacific has learned that a women's coalition group is said to be pushing for the drafting of a bill to increase women's representation in the legislature and other decision-making bodies through the introduction of a quota system.

A study<sup>2</sup> in Kiribati, Tonga and Solomon Islands, has shown that women with disabilities are particularly vulnerable to hardship and poverty, and often are culturally, socially and economically excluded. Despite some helpful laws, policies and systems of practice in some countries, they are less educated, experience higher rates of unemployment, are more likely to be abused, are

poorer, are more isolated, experience worse health outcomes and generally have a lower social status than men living with disabilities or female peers elsewhere. Moreover, women with disabilities are two to three times more likely to become victims of physical and sexual abuse than women with no disabilities. Their access to reproductive health care is minimal, and they suffer greater vulnerability as a result.

Against this background, it is important to recall the UPR recommendation which requires Tonga to prioritize gender equality initiatives within its Tonga Strategic Development Framework and intensify efforts to increase women's participation at all formal decision-making levels (A-79.33).

Recommendations:

- As a matter of priority, to amend the marriage law, including raising the marriage age above 18 years of age and declare marriage below the minimum legal age as void *ab initio*, meaning it shall have no legal basis under any pretext, be it custom, religion, or traditional practices.
- To increase the existing range of punishments and fines for all parties involved in performing or abetting the performance of child marriages so as to be commensurate with the seriousness of the offense. Also, to recognize child marriage as a form of child labor, explicitly criminalizing child labor within the domestic sphere under laws related to children.
- To continue public campaigns such as “Let Girls be Girls” in collaboration and with civil society, relevant Government ministries (such as the Ministry of Education, Information and Communication) as well as religious leaders.
- To ensure in law and in practice that women are paid a salary equal to that of their male counterparts for the same type of work.
- To take specific measures to increase representation of women at the decision-making level, including within the Legislative Assembly. In particular, to expedite the adoption of necessary laws on increasing women's representation in the legislature and other decision-making bodies via special temporary measures.
- To introduce more targeted programmes to taking into account the specific needs of women belonging to marginalized and vulnerable groups, such as rural women as well as women with disabilities..
- To amend the Land Act currently in effect, particularly its provision forbidding women from inhering land.

## **B. Freedom of expression**

Tonga has been ranked 49<sup>th</sup> on the 2017 World Press Freedom Index, down from 37<sup>th</sup> place in 2016 (report released May 2017 by Reporters Sans Frontières - RSF.) According to RSF, the Government adopted a new law in 2015 i.e. the Communications Amendment Act in an effort to regulate “harmful” online content, especially that of social networks; it provides for the creation of an Internet regulatory agency with the power to block Web sites. This has limited the media freedom provided for by the Constitution (Article 7).

The Tonga Prime Minister has recently threatened the public broadcaster due to his dissatisfaction with their reporting. Akilisi Pohiva's Government has also fired the board chair and the general manager of the Tonga Broadcasting Commission (TBC), and the latter is now before the courts. In June 2017, the Government announced that Tonga's national broadcaster, the Tonga Broadcasting Commission, would be privatized.

### **Recommendation**

- To respect the right to freedom of expression in law and practice.

## **C. Right to life, liberty and security of person**

The Government of Tonga contends that the domestic legal framework of Tonga, particularly the criminal and extradition law, prohibits torture, and other cruel, inhuman and degrading treatment and punishment. This is the argument put forward as the reason for not ratifying CAT. However, Tonga has made a commitment to ratify CAT. During its UPR review (year to be inserted), one of the recommendations was to ratify CAT, which enjoys the support of Tonga.

Corporal punishment is prohibited as a disciplinary measure in prisons. Section 66 of the Prison Act, 2010 states that subjecting a prisoner to corporal punishment, torture or cruel, inhumane or degrading treatment is prohibited. However, as of May 2017, provisions in the Prison Rules 1947 (particularly Articles 45, 163, 164 and 165) have not been formally repealed.

However, corporal punishment is considered a lawful as sentence for crimes under Section 24 of the Criminal Offences Act 1926. The law empowers authorities to give boys under the age of 16 as many as 20 lashes “with a light rod or cane composed of tamarind or other twigs,” whereas adults may be given up to 26 lashes “with a cat (cat of nine tails) pattern approved by the Cabinet” (Article 31).

The Education Act, 2013 prohibits corporal punishment in the form of verbal abuse and the use of force against any student in a school or on school premises. However, various reports reveal that corporal punishment remains widespread in the country, including in primary and secondary school settings.

Recommendations:

- To take specific measures (legislative, administrative) to prohibit corporal punishment of children both in public and private settings.
- To strictly enforce the legal and constitutional provisions concerning the prohibition of torture and cruel and inhuman and degrading treatment and punishment. To consider ratifying CAT in this context.

**D. Administration of justice, including impunity and the rule of law**

In a report published in 2016, Tonga was ranked 165 out of 197 countries worldwide in a first global ranking on how effectively children are able to use the courts to defend their rights. This low standing is attributed to the country's not having a separate juvenile court or system for children and to limited implementation of the Convention on the Rights of the Child.

Recommendation:

- To consider establishing separate juvenile courts.

**E. Right to participate in public and political life**

Although the current legal and institutional framework provides opportunities for citizens, including CSOs to participate in the law-making and oversight process through standing committees and public hearings, these mechanisms need to be strengthened to ensure that the engagement process and its outcomes are inclusive, open, transparent and participatory. Currently, CSOs, churches, registered interest groups and other constituents are not fully participating in the law-making, oversight, national planning and budgeting process.

CSOs face a range of capacity constraints, including an uncertain funding environment, high staff turnover, lack of coordination and limited capacity of

financial management and reporting.

#### Recommendations

- To strengthen mechanisms to ensure that civil society engagement and participation in the law-making and oversight process are inclusive, open, transparent and participatory.
- To create a conducive environment for civil society to grow and thrive so that it may provide critical input for the development of public policies.

#### **F. Right to social security and to an adequate standard of living**

As in many other Pacific island countries, Tonga has witnessed a decline in the contribution of the primary sector to GDP and a general weakening of the rural sector where many of the vulnerable and poor live. The declining importance of the primary sector has been exacerbating inequality as rural households struggle to generate cash income to purchase the basic essentials. In urban areas, poverty is mostly the result of rural-urban migration caused by the movement of people from rural and remote areas of the country to towns and cities in search of better employment opportunities needed to improve their livelihoods.

Men outnumber women in paid employment outside the agricultural sector, and they are paid 20% to 50% more than women. Higher education for young women fails to lead to better employment outcomes due to gender barriers in labour markets, gender stereotypes about suitable occupations for women and traditional expectations regarding a woman's unpaid domestic activity and work taking care of the family.. In the private sector women are almost invisible on company boards. In the public sector, women usually occupy lower-level positions<sup>3</sup>.

In Tonga, the share of the poorest quintile in total household consumption increased over the last decade marking some improvement in income inequality with figure around 10%. Like many other Pacific island countries, Tonga is a net food importing country, and its dependency on availability make it vulnerable to the price volatility of food imports.

The right of access to clean water and basic sanitation is a growing concern in Tonga. More and more changing weather patterns as a result of climate change have negatively impacted the availability of water resources as well as the effectiveness of sanitation. If unaddressed, this may result in more severe crises,

including social unrest which would particularly affect urban areas.

### **G. Right to health**

Despite overall improvements in health services, maternal health continues to be a cause for concern. Maternal morbidity leaves many women chronically ill or disabled.

Sexual and gender-based violence, including intimate-partner violence, sexual assault and rape, as well as violence against transgenders is widespread, with 80% of women having experienced gender-based violence. Forced sex constitutes a key risk for STI and HIV transmission as well as other sexual and reproductive health problems, including unwanted pregnancy and psychological trauma.

Various studies have revealed that nearly one-third (30%) of women under 25 currently suffer from an STI. This largely has to do with a strong religious disapproval of the use of condoms.

#### Recommendations:

- To continue strengthening universal access to healthcare services, including sexual and reproductive health services, particularly for newborns and children, as this will result in a healthier population and, in the long run, reduce public expenditures on health as well as the number work-days lost due to illness.
- To provide life-skills-based education and the incorporation of sexual education in school curricula.

### **H. Right to education**

Tonga is a lower-middle-income country with reasonable health and education status with a 99.4% literacy rate. Progress has been made toward attaining the MDGs, particularly in achieving universal primary education (MDG 2) and ensuring environmental sustainability (MDG 7).

As for gender equality in school enrollment, Tonga is one of the few countries in the Pacific where gender disparity in formal education at the primary and secondary level education is said to be non-existent. The gender parity index in 2012 of enrollment at the pre-primary and primary level stood at 0.99 (UNESCO, Pacific Education For All 2015 Review, 2015). But challenges remain, particularly for remote communities and persons with disabilities. These include gendered learning pathways that limit opportunities for women and girls to

engage in education that suits their interests and capabilities.

Whilst the expansion of free basic education has been a key to improving access to primary schooling for children from low-income households, the quality of education remains a concern. Government spending on education in Tonga is the highest in the Pacific.

## I. Persons with disabilities

In 2015, the Government established a Social Protection and Disability Division under the Ministry of Internal Affairs with a view to developing social protection policies and schemes to support vulnerable populations, including persons with disabilities, and improve their quality of life by 2025. However, such institutional arrangements have yet to be supported with the help of robust legal and policy frameworks that recognize the rights of persons with disabilities. Moreover, Tonga has yet to ratify the UN Convention on the Rights of Persons with Disabilities, 2006.

### Recommendations:

- As a matter of priority, to consider ratifying the UN Convention on the Rights of Persons with Disabilities, 2006 and strengthening the legal and policy framework related to enhancing access of persons with disabilities to health, education, employment, public places, transport and information.

## J. LGBTI

The Criminal Offences Act 1988 criminalises consensual same-sex activities between men and carries a maximum penalty of ten years' imprisonment, and at the court's discretion, the use of corporal punishment (a clear violation of the absolute prohibition on torture and cruel, inhuman and degrading treatment and punishment).<sup>4</sup> The Constitution of Tonga of 1988 contains a Declaration of Rights which provides for equality before the law (Clause 4). However, the text does not refer to freedom from discrimination nor do other laws exist ensuring protection

from discrimination on grounds of sexual orientation and gender identity.<sup>5</sup>

Nonetheless, it is interesting to note that Principle 5 of the Judicial Code of Conduct Rules 2010 prohibits judges to discriminate against any person on “irrelevant grounds.” Principle 5(1) includes sexual orientation as one of those grounds.<sup>6</sup>

Like many other Pacific nations, Tonga is a highly religious and conservative country. Tongan culture is supportive of transgender and gender-diverse people and has a strong traditional *leiti* (or *fakaleiti*) community. The Tonga Leitis Association is well respected and has the support of the Tongan royal family, with Hon. Salote Lupepau’u Tuita Talone serving as the organization’s patron.<sup>7</sup> Nonetheless, the *leitis* enjoy no legal recognition, and cross-dressing remains a crime as per Section 81(5) of the Tongan Criminal Offences Act. The act of cross-dressing may result in a fine not exceeding \$100 and/or imprisonment for a period not exceeding one year. Under Section 136, a person convicted of sodomy can be sent to prison for up to ten years. In December 2016, the Tonga Leitis Association held a national consultation with the Government to revise criminal laws to protect LGBT persons.<sup>8</sup>

During its first UPR in 2008, Tonga noted three recommendations to decriminalise same-sex relations. Tonga’s response to the issue of the right to privacy and sexual activity between consenting adults was that Tonga is an inclusive society with tolerant Christian values that require respect for differences and “allows the widest margin of appreciation to lawmakers and other stakeholders to engage in discussions on issues related to equality.”<sup>9</sup>

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Constitution of Tonga. Available at: [http://www.paclii.org/to/legis/consol\\_act/cot238/](http://www.paclii.org/to/legis/consol_act/cot238/)

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ILGA, *State Sponsored Homophobia 2017*, p.60,  
[http://ilga.org/downloads/2017/ILGA\\_State\\_Sponsored\\_Homophobia\\_2017\\_WEB.pdf](http://ilga.org/downloads/2017/ILGA_State_Sponsored_Homophobia_2017_WEB.pdf)

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Spotlight: Tongan Leitis Association, Tonga Available:  
<http://apcom.org/2013/08/29/spotlight-tongan-leitis-association-tonga/>

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Radio NZ ‘Tonga LGBTI seeks crime act reforms’ 5 October 2016. Available at  
<http://www.radionz.co.nz/international/pacific-news/314947/tonga-lgbti-seeks-crime-act-reforms>

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Report of the Working Group on the Universal Periodic Review: Tonga (A/HRC/8/48), 5 June 2008, paras 45 and 65.

During the second UPR cycle in 2013, Tonga accepted the recommendation to strengthen measures to eliminate all discriminatory treatment related to sexual orientation and gender identity. However, it noted five recommendations to bring its national legislation into conformity with its commitment to equality and non-discrimination by repealing Penal Code/Criminal Offences Act provisions criminalising sexual relations between consenting same-sex adults and combating discrimination against them.<sup>10</sup>

Recommendations:

- To bring national legislation into conformity with a commitment to equality and non-discrimination by repealing Penal Code/Criminal Offences Act provisions criminalising same-sex sexual relations between consenting adults and combating discrimination against them.
- To prevent violence by raising public awareness of the situation of LGBTI persons so as to encourage more open, respectful and inclusive communities.

#### **K. Right to development and environmental issues**

Tonga lies on the Pacific Ring of Fire, an area of dynamic geological activity. It is ranked as the second most vulnerable country to natural hazards (after Vanuatu). It is prone to disasters such as storm surges, flooding, tsunamis and cyclones as well as droughts that can cause human suffering and loss of housing and livelihoods and affect food security. And women, girls and boys, as well as persons with disabilities, face particular vulnerabilities.

In 2014 a category-five cyclone hit the Pacific island countries, including Tonga. It affected Tonga's economic, human, and natural environment, diverting considerable energy and resources from the country's long-term development agenda. The effects of climate change are liable to increase Tonga's susceptibility to disasters, which could threaten all aspects of sustainable development in the Kingdom.

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UPR info, 'Recommendations & Pledges TONGA second review session 15' refer recommendations 81.5 – 81.10 (p.4 & 5) available: [https://www.upr-info.org/sites/default/files/document/tonga/session\\_15\\_-\\_january\\_2013/recommendationsandpledgestonga2013.pdf](https://www.upr-info.org/sites/default/files/document/tonga/session_15_-_january_2013/recommendationsandpledgestonga2013.pdf)

In June 2017, the Government of Tonga, with the support of UNDP-UN Environment National Adaptation Plan Global Support Programme, held discussions on the second Joint National Action Plan for Climate Change Adaptation and Disaster Risk Management (JNAP 2). Some of the key gaps identified in JNAP1 include the need for sector-based plans that fully integrate climate resilience with a priority focus on biodiversity, education, energy, fisheries, forestry, health, infrastructure, land, water and youth. JNAP 2 will address this need.

The UN General Assembly and Pacific island countries, including Tonga, have endorsed the Sendai Framework for Disaster Risk Reduction (2015-2030) as the global strategy for building resilience of communities with the aim of reducing risk from natural hazards and disasters so as to help ensure sustainable development. This has also been incorporated in the SDGs and acknowledged in the SAMOA pathway. In many cases, however, existing technical knowledge and financial capacity is insufficient to adequately address climate and disaster vulnerabilities and reduce risks. Implementation and absorptive capacities remain a key issue, and the effectiveness of early warning systems is also affected by the geographical expansiveness of the country as well as limitations and high costs of communication systems.<sup>11</sup>

Recommendations:

- To periodically assess the impact of climate change and natural disasters, particularly in the enjoyment of human rights (i.e. food, shelter, health, education and water) by the poor and lower-income population and various other social groups and to assist them in becoming more resilient in the face of such disasters.
- To develop sector-based plans and programmes that fully integrate climate resilience with a priority focus on biodiversity, education, energy, fisheries, forestry, health, infrastructure, land, water and youth. To ensure that stakeholders, including target groups, are consulted while planning such interventions.

## **Annex 1: Abbreviations**

CAT	Convention Against Torture
CEDAW	Convention on the Elimination of All Forms of Discrimination Against Women
CERD	Convention on the Elimination of Racial Discrimination
CRC	Convention on the Rights of Child
CSOs	Civil Society Organisations
GDP	Gross Domestic Products
HIV	Human Immunodeficiency Virus
ICCPR	International Covenant on Civil and Political Rights
ICESCR	International Covenant on Economic, Social and Cultural Rights
MDG	Millennium Development Goals
RSF	Reporters Sans Frontières
STI	Sexually Transmitted Diseases
UN	United Nations
UPR	Universal Periodic Review