

Universal Periodic Review (29th session, Jan-Feb 2018)
Contribution of UNESCO
Contribution of UNESCO to Compilation of UN information
(to Part I. A. and to Part III - F, J, K, and P)

Tonga

I. Background and framework

Scope of international obligations: Human rights treaties which fall within the competence of UNESCO and international instruments adopted by UNESCO.

Title	Date of ratification, accession or succession	Declarations /reservations	Recognition of specific competences of treaty bodies	Reference to the rights within UNESCO's fields of competence
Convention against Discrimination in Education 1960	Not-ratified	Reservations to this Convention shall not be permitted		Right to education
Convention on Technical and Vocational Education 1989	Not-ratified			Right to education
Convention concerning the Protection of the World Cultural and Natural Heritage 1972	30/06/2004 Acceptance			Right to take part in cultural life
Convention for the Safeguarding of the Intangible Cultural Heritage 2003	26/01/2010 Acceptance			Right to take part in cultural life
Convention on the Protection and Promotion of the Diversity of Cultural Expressions 2005	Not ratified			Right to take part in cultural life

Right to Education

II. Promotion and protection of human rights on the ground

1. The **Tongan Constitution** of 1988 does not contain any provisions regarding the right to education. However, Part I on the Declaration of Rights enshrines in Article 4 the principle

of equality. The **Education Act of 1974**, as last revised in 1988, provides for compulsory education for children between 6 and 14 years old.¹

2. In terms of reporting to UNESCO, within the framework of the latest consultations of Member States on the measures taken to implement the Recommendation against Discrimination in Education, Tonga did not submit national report for the 9th (2016-2017) and the 8th (2011-2013) consultations. Similarly, Tonga did not report on the measures taken for the implementation of the 1974 UNESCO Recommendation concerning Education for International Understanding, Co-operation and Peace and Education relating to Human Rights and Fundamental Freedoms within the framework of the 5th (2012-2013) and the 6th (2016-2017) consultations of Member States.

Freedom of opinion and expression

➤ Constitutional and Legislative Framework:

3. Article 7 of the Constitution of Tonga guarantees freedom of expression and freedom of press, stating that it is “lawful for all people to speak write and print their opinions and no law shall ever be enacted to restrict this liberty.”². Amendment to the Constitution of 2003 provides legal basis “to enact laws to regulate the operation of any media.”³
4. Tonga has several legislations that allow the authorities to regulate media, The Communications Act 2015⁴ establishes a communications licensing and regulation framework, the Media Operators Act of 2003⁵ that sets the condition under which internationally owned and operated media outlets can operate in the country, the Prohibited Publications Act⁶ regulates the importation of certain publications, and the Cinematograph Act controls cinematograph and similar displays.
5. The Ministry of Information and Communications has the power under section 96 of the Communications Act 2015⁷ to censor, subject to the approval of the Minister, a licensee if the media supply content that is indecent, displays excessive violence, is blasphemous, treasonous, seditious, defamatory or goes against Tonga’s laws. The Ministry may also require a licensee to supply content of religious interest, related to national interest matters, or educational matters. The Ministry may also determine the “extent and manner in which a licensee may provide political or controversial content.”

¹ <http://www.unesco.org/education/edurights/media/docs/d9f2989eeb57d49137dfcf652bcc126c7423ad96.pdf>

² http://www.ilo.org/wcmsp5/groups/public/---ed_protect/---protrav/---ilo_aids/documents/legaldocument/wcms_536448.pdf

³ <http://crownlaw.gov.to/cms/images/LEGISLATION/AMENDING/2003/2003-0017/ActofConstitutionofTongaAmendmentAct2003.pdf>

⁴ http://crownlaw.gov.to/cms/images/LEGISLATION/PRINCIPAL/2015/2015-0026/CommunicationsAct2015_1.pdf

⁵ http://www.crownlaw.gov.to/cms/images/LEGISLATION/PRINCIPAL/2003/2003-0004/MediaOperatorsAct2003_1.pdf

⁶ http://www.crownlaw.gov.to/cms/images/LEGISLATION/PRINCIPAL/1960/1960-0002/ProhibitedPublicationsAct_1.pdf

⁷ http://crownlaw.gov.to/cms/images/LEGISLATION/PRINCIPAL/2015/2015-0026/CommunicationsAct2015_1.pdf

6. In 2012, the Government issued a freedom of information policy, which allows the public to officially seek information from the Government, with the exception of information relating to the defense of the State⁸.
7. Defamation is regarded as a criminal offense under the Defamation Act⁹ and is punishable by fine or imprisonment in case of default of payment. The fine and term of imprisonment for defaming the Royal Family and certain dignitaries is higher¹⁰.

➤ Implementation of legislation:

8. According to the Communications Act 2015, the Minister responsible for Communications is in charge of exercising “general supervision and control over all matters relating to the communications sector”¹¹. The Ministry of Information and Communications oversees the application of the Media Operators Act of 2003.
9. The Communications Commission is responsible for licensing and controlling radio frequencies and for enforcing the Communications Act 2015¹² and is composed of four members, appointed by an Appointments Committee, which consist of the Minister, an ICT Expert and a representative of the industry consumers whom are appointed by the Minister.

➤ Safety of journalists:

10. UNESCO¹³ did not report any killing of journalists between 2008 until present time.

III. UPR Recommendations

11. Below are the recommendations made within the framework of the 2nd cycle of the Working Group (23rd session) on the Universal Periodic Review (March 2013)¹⁴:

79.49. *Continue its progress in the field of human rights education through increasing further international and regional cooperation,*

79.50. *Continue pursuing its efforts in upholding respect for human rights and the well-being and development of its people through education, in line with its Education Policy Framework 2004-2019,*

79.51. *In cooperation with UNESCO and other relevant organizations, continue to step up efforts to improve access to quality education,*

⁸ <http://www.mic.gov.to/government/initiatives-freedom-of-information/3879-tonga-launched-its-freedom-of-information-policy>

⁹ http://crownlaw.gov.to/cms/legislation/current/by-title.html?view=acts_alpha

¹⁰ http://crownlaw.gov.to/cms/images/LEGISLATION/PRINCIPAL/1923/1923-0010/DefamationAct_1.pdf

¹¹ http://crownlaw.gov.to/cms/images/LEGISLATION/PRINCIPAL/2015/2015-0026/CommunicationsAct2015_1.pdf

¹² http://crownlaw.gov.to/cms/images/LEGISLATION/PRINCIPAL/2015/2015-0026/CommunicationsAct2015_1.pdf

¹³ <http://en.unesco.org/unesco-condemns-killing-of-journalists>

¹⁴ <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G13/124/77/PDF/G1312477.pdf?OpenElement>

79.52. *Continue the policy of free and compulsory education through cooperation with and assistance from the international community.*

IV. Review and specific recommendations

12. During the last UPR cycle, recommendations concerned human rights education, quality education and free and compulsory education. In 2004, Tonga launched its Education policy framework 2004-2019 to provide Tonga with a vision and a broad outline strategy for the development of the education system over the medium to longer term.¹⁵ However no recent data is available regarding the implementation of this strategy and no monitoring system could be identified. UNESCO organizes periodic Consultations of Member States on measures taken to implement the UNESCO Recommendation concerning Education for International Understanding, Co-operation and Peace and Education relating to Human Rights and Fundamental Freedoms. Regrettably, Tonga did not report within the framework of the latest Consultations. This would have been a valuable opportunity for the country to make a self-assessment of the situation and progress made on this matter and to share information to UNESCO.
13. Efforts could also be made to ensure the constitutional framework also enshrines education as a human right, since it is not yet the case. In the context of SDG-4 on Education, such provisions are useful with a view to harness progress to provide “inclusive and equitable quality education and lifelong learning for all” and to ensure education without discrimination. In that respect, Tonga should be strongly invited to ratify UNESCO’s Convention against Discrimination in Education, which provides an international legal framework for the right to education and non-discrimination.
14. At the pre-primary level, Tonga has made significant stride in achieving Education for All goal 1 of early childhood care and education by increasing the gross enrolment ratio from 29% in 2000 to 71% in 2012. Notably, the ratio remains approximately the same for both sexes in 2012 (71% for boys and 70% for girls). While being higher than the world average of 54%, the ratio indicates that almost 30% of children in Tonga do not participate in pre-primary education.
15. The opposite trend is however observed at primary level in which adjusted net enrolment rate dropped from 99% in 2000 to 90% in 2012. Similarly, survival rate to the last grade of primary education declined from 95% in 2000 to 91% in 2005, indicating that more young students dropped out of school. Gross enrolment rate in 2012 stood at 109% indicating that there are children enrolled in primary schools who are over – or under-age.¹⁶

➤ Specific recommendations:

¹⁵ Tonga ministry of education, *Tonga education policy framework 2004-2019*, 23 April 2004, available at : <http://www.unesco.org/education/edurights/media/docs/c9b6d9d995564258cdb0495e9f45268ef6e50c7d.pdf>

¹⁶ Reference from Pacific Education for all 2015 Review

1. Tonga should be strongly encouraged to ratify the UNESCO Convention against Discrimination in Education.
2. Tonga should be strongly encouraged to enshrine the right to education within its Constitution.
3. Tonga should be encouraged to monitor and report on the implementation of its education policy framework.
4. Tonga could be encouraged to further its actions in order to improve quality and human rights education.
5. Tonga should be strongly encouraged to submit state reports for the periodic consultations on UNESCO's education-related standard-setting instruments.
6. Tonga should be encouraged to share with UNESCO any relevant information to update its country profile on UNESCO's Global Database on the Right to Education.¹⁷

Freedom of expression

16. Tonga is recommended to decriminalize defamation and place it within a civil code that is in accordance with international standards.
17. Tonga is recommended to consider strengthening the independence of broadcast licensing in line with international standards.

Cultural Rights

18. As a State Party to the Convention concerning the Protection of the World Cultural and Natural Heritage (1972)¹⁸ and the Convention for the Safeguarding of the Intangible Cultural Heritage (2003)¹⁹, Tonga is encouraged to fully implement the relevant provisions that promote access to and participation in cultural heritage and, as such, are conducive to implementing the right to take part in cultural life as defined in article 27 of the Universal Declaration of Human Rights and article 15 of the International Covenant on Economic, Social and Cultural Rights. In doing so, Tonga is encouraged to give due consideration to the participation of communities, practitioners, cultural actors and NGOs from the civil society as well as vulnerable groups (minorities, indigenous peoples, migrants, refugees, young peoples and peoples with disabilities), and to ensure that equal opportunities are given to women and girls to address gender disparities.
19. Tonga is also encouraged to ratify the Convention on the Protection and Promotion of the Diversity of Cultural Expressions (2005) as a means to promote access to and participation

¹⁷ <http://www.unesco.org/new/en/education/themes/leading-the-international-agenda/right-to-education/database/>

¹⁸ Periodic Report available at: <http://whc.unesco.org/document/116967>

¹⁹ Periodic Report not available.

in creative expressions and as such contribute to implementing the right to take part in cultural life.

**Freedom of scientific research and
the right to benefit from scientific progress and its applications**

20. Tonga has not submitted its National Report on the implementation of the **Recommendation on the Status of Scientific Researchers** (1974) for the **Second Consultation** covering the period from 2013 to 2016 (<http://on.unesco.org/2hL0xGz>). Therefore **Tonga** is encouraged to report to UNESCO on any legislative or other steps undertaken by it to ensure the application of this international standard-setting instrument in line with the online monitoring questionnaire (<http://unesdoc.unesco.org/images/0024/002468/246830E.pdf>). When replying to the 2013-2016 monitoring questionnaire, **Tonga** is kindly invited to pay particular attention to the legal provisions and regulatory frameworks which ensure that scientific researchers have the responsibility and the right to work in the spirit of the principles enshrined in the 1974 Recommendation. The issues under consideration are: autonomy and freedom of research and expression; academic freedom to openly communicate on research results; participation of scientific researchers in the definition of the aims and objectives of research; compliance of research methods with respect for universal human rights and fundamental freedoms, as well as ecological and social responsibility; freedom of movement of researchers and respect for their economic, social and cultural rights.