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paragraph 5 of the annex to Human Rights Council  
resolution 16/21**

## **Tonga**

The present report is a compilation of the information contained in the reports of treaty bodies, special procedures, including observations and comments by the State concerned, and the Office of the High Commissioner for Human Rights (OHCHR), and in other relevant official United Nations documents. It is presented in a summarized manner due to word-limit constraints. For the full text, please refer to the document referenced. This report does not contain any opinions, views or suggestions on the part of OHCHR other than those contained in public reports and statements issued by the Office. It follows the general guidelines adopted by the Human Rights Council in its decision 17/119. Information included herein has been systematically referenced in endnotes. The report has been prepared taking into consideration the periodicity of the review and developments during that period.

## I. Background and framework

### A. Scope of international obligations<sup>1</sup>

#### International human rights treaties<sup>2</sup>

	<i>Status during previous cycle</i>	<i>Action after review</i>	<i>Not ratified/not accepted</i>
<i>Ratification, accession or succession</i>	ICERD (1972) CRC (1995)		ICESCR ICCPR ICCPR-OP 2 CEDAW CAT OP-CAT OP-CRC-SC OP-CRC-AC ICRMW CRPD (signature only, 2007) CPED
<i>Reservations, declarations and/or understandings</i>	ICERD (reservation: art. 5 (d) (v); declarations: arts. 4 (a), (b) and (c), 6, 15 and 20 (1972); withdrawal of reservation: arts 2, 3, 5 (c), (e) (v) (1977))		
<i>Complaint procedures, inquiry and urgent action<sup>3</sup></i>			ICERD, art. 14 OP-ICESCR ICCPR ICCPR-OP 1 OP-CEDAW CAT OP-CRC-IC ICRMW OP-CRPD CPED

1. The United Nations High Commissioner for Refugees (UNHCR) noted that Tonga was not party to the following conventions: the 1951 Convention relating to the Status of Refugees and its 1967 Protocol; the 1954 Convention relating to the Status of Stateless Persons; the 1961 Convention on the Reduction of Statelessness. It recommended that Tonga accede to these instruments.<sup>4</sup> Notwithstanding the relatively small number of cases, and competing domestic priorities, UNHCR explained that accession to the 1951 Convention and the establishment of a national legal framework would provide a clearer basis for Tonga to provide refugees with international protection and a mechanism that enabled the appropriate engagements of relevant international organizations like UNHCR and the International Organization for Migration (IOM).<sup>5</sup>

2. UNHCR underlined that Tonga had acceded to the International Convention on the Elimination of Racial Discrimination (ICERD) and to the Convention on the Rights of the Child (CRC), but was not party to any other international human rights treaty.<sup>6</sup>

3. OHCHR Regional Office for the Pacific (RO Pacific) highlighted that Tonga was one of the few countries in the Pacific that had not yet ratified the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW).<sup>7</sup>

#### Other main relevant international instruments

	<i>Status during previous cycle</i>	<i>Action after review</i>	<i>Not ratified</i>
<i>Ratification, accession or succession</i>	Convention on the Prevention and Punishment of the Crime of Genocide		Rome Statute of the International Criminal Court
	Geneva Conventions of 12 August 1949 and Additional Protocols I and II <sup>8</sup>		Palermo Protocol <sup>9</sup> Protocol III to the 1949 Geneva Conventions <sup>10</sup> Conventions on Refugees and Stateless Persons <sup>11</sup> ILO fundamental conventions <sup>12</sup> ILO Conventions Nos. 169 and 189 <sup>13</sup> UNESCO Convention against Discrimination in Education

## B. Constitutional and legislative framework

4. RO Pacific mentioned that the Constitution of Tonga protected a number of civil and political rights, but no specific human rights legislation had been enacted.<sup>14</sup>

5. RO Pacific noted that in 2007, King George Tupou V had relinquished much of his power and had handed over the day-to-day running of Government to the Prime Minister.<sup>15</sup> It highlighted the recent legislative reforms and the establishment of a new parliamentary system. On 25 November 2010, general elections under the new electoral law were held; 17 representatives were elected while nine non-elected representatives remained. Up to four others might be appointed by the King on the advice of the Prime Minister. The King appointed the Prime Minister on the recommendation of the Legislative Assembly's elected members.<sup>16</sup>

6. UNHCR stated that Tonga's Nationality Act should be reformed to include a safeguard against statelessness, so that children born in the territory, who would otherwise be stateless, can acquire Tongan nationality.<sup>17</sup> UNHCR recommended that Tonga accept its technical support for drafting national refugee legislation, capacity-building for Government officials as well as assistance for developing a national refugee status determination procedure.<sup>18</sup>

## C. Institutional and human rights infrastructure and policy measures

7. RO Pacific noted that Tonga had declared that there was no formal human rights infrastructure in the sense of a national human rights institution; however, there was a Public Complaints Commissioner who received and investigated public complaints about Government departments.<sup>19</sup>

8. UNHCR recommended that the Tonga authorities accept UNCHR's offer to train relevant officials to integrate "good practices" and international standards of asylum/refugee protection into operational guidelines and procedures. It also encouraged Tonga to develop a rights-based disaster management and mitigation plan within the regional and United Nations mechanisms, which emphasizes the process and adaptation of mitigation strategies, as well as addresses potential internal and/or international displacement.<sup>20</sup>

## II. Cooperation with human rights mechanisms

### A. Cooperation with treaty bodies<sup>21</sup>

#### Reporting status

<i>Treaty body</i>	<i>Concluding observations included in previous review</i>	<i>Latest report submitted since previous review</i>	<i>Latest concluding observations</i>	<i>Reporting status</i>
CERD	March 2000	–	–	Fifteenth to twentieth reports overdue since 2007
CRC	–	–	–	Initial report overdue since 1997

### B. Cooperation with special procedures<sup>22</sup>

	<i>Status during previous cycle</i>	<i>Current status</i>
<i>Standing invitation</i>	No	No
<i>Visits undertaken</i>	–	–
<i>Visits agreed to in principle</i>	–	–
<i>Visits requested</i>	–	–
<i>Responses to letters of allegations and urgent appeals</i>	During the period under review, one communication was sent. The Government did not reply to it.	

### **C. Cooperation with the Office of the High Commissioner for Human Rights**

9. Tonga is covered by the OHCHR Regional Office for the Pacific in Suva, Fiji. In 2011, RO Pacific trained and mentored civil society actors on monitoring and documenting human rights violations.<sup>23</sup>

## **III. Implementation of international human rights obligations**

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

10. RO Pacific reported that in 2007, in one of the criminal cases against the November 2006 rioters (eight people died in the riots, and the police arrested over 900 people<sup>24</sup>), the Tonga Supreme Court had recognized absolute prohibition of torture, even though the country had not ratified the Convention against Torture (CAT), nor did it have provisions for the prohibition of torture in its Constitution.<sup>25</sup> Moreover, RO Pacific stated that the centrality of the role of civil society in the prevention of torture had been reaffirmed in connection with the 2006 riots. It added that without the civil society action, police discipline would have not been a priority and, without the documentation, police abuse would have remained largely an issue of hearsay.<sup>26</sup>

11. RO Pacific noted that in February 2010, a judge had sentenced two men to 13 years' imprisonment and half a dozen lashes for escaping from prison and stealing. It mentioned that flogging had not been used as a penalty since the 1980s.<sup>27</sup>

12. RO Pacific stated that there was no specific domestic violence legislation and that national legislation did not criminalize rape in marriage.<sup>28</sup> However, according to RO Pacific, there has been some positive developments such as the National Domestic Violence Unit established in 2007, which had four staff members in 2011. In addition, a "no-drop policy" was adopted in 2008, aimed at ensuring that physical assaults suspected of being related to domestic violence and other suspected domestic violence-related crimes were investigated and prosecuted in a consistent and uniform manner.<sup>29</sup>

13. RO Pacific referred to statistics compiled by the Women and Children Crisis Centre which indicated that there had been 404 reports of domestic violence made to the police in 2009. The Police Commander stated that those cases had only been the tip of the iceberg and ultimately the level of the violence against women was unknown.<sup>30</sup>

14. RO Pacific noted that criminal responsibility could apply to children over the age of 7, and male children between 7 and 15 could be punished with up to 20 strokes of the whip. It underlined that corporal punishment was lawful in the penal system as a criminal penalty. It added that corporal punishment was lawful in the home, but prohibited in schools. In that regard, RO Pacific, citing a UNICEF-Government of Tonga report, noted that there was a traditional acceptability of physical punishment<sup>31</sup> to discipline children and that beating was the main form of punishment.<sup>32</sup>

15. Regarding the protection system, RO Pacific stated that there had been calls for Tonga to implement legislation to protect children from abuse, particularly in the areas of physical abuse, sexual exploitation and child labour. RO Pacific noted that there was no Government agency for the welfare of children.<sup>33</sup>

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

16. RO Pacific highlighted that the Tonga Police Act had entered into force in 2010 and that the fundamental change had been a separation of powers between the Police Commissioner and the Minister for Police. It mentioned that the Police Commissioner had been given the power to manage the day-to-day functioning of the police force.<sup>34</sup>

17. Furthermore, RO Pacific noted that the Tonga Police Act gave primacy to criminal charges over internal investigation as well as to cooperation between the police services and the criminal justice processes. RO Pacific underscored the introduction of merit-based promotion.<sup>35</sup>

18. RO Pacific noted that in 2009 the police had begun a public consultation to guide reform and that this process had resulted in a new strategic plan. Emphasis was put on public accountability; the reformers recognized the need to address abuses and to judge police officers by the same laws they sought to uphold. In November 2009, a Professional Standards Unit to address police conduct, while on and off duty, was established. In addition, the results of the Unit's work were published. RO Pacific reported that in March 2011, half the police force had signed a petition requesting the termination of the contract of the Police Commissioner.<sup>36</sup>

## **C. Freedom of expression and right to participate in public and political life**

19. In 2008, the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression sent a communication concerning information received that on 9 April 2008, the Government had placed restrictions on the Tonga Broadcasting Commission, compelling it to stop broadcasting pre-recorded campaign speeches of candidates in order to allow a newly appointed editorial committee to edit the speeches. This editorial committee was composed of professionals with no prior experience in the media and included the Chief Secretary to the Cabinet. According to sources, any reference to the pro-democracy protests of November 2006 had to be deleted from campaign speeches. The Special Rapporteur expressed concern that the restrictions placed on the Tonga Broadcasting Commission could prevent candidates from exercising their right to freedom of opinion and expression.<sup>37</sup>

20. RO Pacific reported that no women had been elected to Parliament in 2010, but one was appointed to the Cabinet.<sup>38</sup>

## **D. Right to work and to just and favourable conditions of work**

21. RO Pacific underlined that economic empowerment of women faced persistent challenges, with gender wage gaps, low women employment rates in the formal economy, and few women in senior management positions in the public and private sectors.<sup>39</sup>

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

22. According to the United Nations Development Programme (UNDP), poverty, in terms of the proportion of the population below the basic-needs poverty line, had risen in recent years, mainly due to the economic crisis. In Tonga, the population below the basic-needs poverty line increased from 11.8 per cent in 2001 to 22.9 per cent in 2009.<sup>40</sup>

23. UNDP noted that there was no formal social protection policy, nor were there any social safety net programmes in Tonga. While the Government provides basic health and education, in recent years more of these costs have been transferred to the public through user fees. Most service delivery is left to NGOs and churches.<sup>41</sup>

## **F. Migrants, refugees and asylum seekers**

24. UNHCR welcomed Tonga's participation in the Pacific Immigration Directors' Conference (PIDC). According to the organization, Tonga's increased involvement at the regional and international levels would assist the development of a national and collective response to regional issues, which might incorporate and harmonize regional efforts to safeguard national and border security, manage migration and ensure international standards of refugee protection.<sup>42</sup>

25. UNHCR stated that in view of the small number of individual cases and more pressing domestic issues, asylum seekers, refugees, stateless persons and internally displaced persons were not prominent concerns in Tonga.<sup>43</sup>

26. UNHCR noted that pursuant to Tonga's Nationality Act, children born in Tonga could only acquire nationality if one of their parents is Tongan. This means that if a child is born in Tonga to parents who are stateless or foreigners who are unable to pass on their nationality to the child, he/she would be stateless.<sup>44</sup>

## **G. Environmental issues**

27. RO Pacific noted that climate change was a major concern for Tonga, in particular, rising sea levels and access to food and water. RO Pacific mentioned that in its initial report under the United Nations' Framework Convention on Climate Change, Tonga had stated that the country was highly vulnerable to the adverse effects of climate variability, sea level and climate changes and that its vulnerability was principally due to its physiographic, socioeconomic and ecological characteristics. RO Pacific added that Tonga was prone to earthquakes which could be followed by tsunamis, like the one experienced in 2009 which had caused death and destruction in the country.<sup>45</sup>

28. UNDP noted that the United Nations Environmental Vulnerability Index (EVI) had classified Tonga as "extremely vulnerable" when measured against indicators which included resilience against natural disasters and climate change, degree of economic diversification as well as other indicators.<sup>46</sup>

29. UNDP reported that in the early morning of 29 September 2009, several tsunami waves had killed people and caused widespread damage to houses and infrastructure, including sea walls, hospitals, schools, roads and tourist resorts. Power and water supplies had also been affected.<sup>47</sup>

## Notes

<sup>1</sup> Unless indicated otherwise, the status of ratification of instruments listed in the table may be found on the official website of the United Nations Treaty Collection database, Office of Legal Affairs of the United Nations Secretariat, <http://treaties.un.org/>. Please also refer to the United Nations compilation on the Kingdom of Tonga from the previous cycle (A/HRC/WG.6/2/TON/2).

<sup>2</sup> The following abbreviations have been used for this document:

ICERD	International Convention on the Elimination of All Forms of Racial Discrimination
ICESCR	International Covenant on Economic, Social and Cultural Rights
OP-ICESCR	Optional Protocol to ICESCR
ICCPR	International Covenant on Civil and Political Rights
ICCPR-OP 1	Optional Protocol to ICCPR
ICCPR-OP 2	Second Optional Protocol to ICCPR, aiming at the abolition of the death penalty
CEDAW	Convention on the Elimination of All Forms of Discrimination against Women
OP-CEDAW	Optional Protocol to CEDAW
CAT	Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment
OP-CAT	Optional Protocol to CAT
CRC	Convention on the Rights of the Child
OP-CRC-AC	Optional Protocol to CRC on the involvement of children in armed conflict
OP-CRC-SC	Optional Protocol to CRC on the sale of children, child prostitution and child pornography
OP-CRC-IC	Optional Protocol to CRC on a communications procedure
ICRMW	International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families
CRPD	Convention on the Rights of Persons with Disabilities
OP-CRPD	Optional Protocol to CRPD
CPED	International Convention for the Protection of All Persons from Enforced Disappearance

<sup>3</sup> Individual complaints: ICCPR-OP 1, art. 1; OP-CEDAW, art. 1; OP-CRPD, art. 1; OP-ICESCR, art. 1; OP-CRC-IC, art. 5; ICERD, art. 14; CAT, art. 22; ICRMW, art. 77; CPED, art. 31. Inquiry procedure: OP-CEDAW, art. 8; CAT, art. 20; CPED, art. 33; OP-CRPD, art. 6; OP-ICESCR, art. 11; OP-CRC-IC, art. 13. Inter-State complaints: ICCPR, art. 41; ICRMW, art. 76; CPED, art. 32; CAT, art. 21; OP-ICESCR, art. 10; OP-CRC-IC, art. 12. Urgent action: CPED, art. 30.

<sup>4</sup> UNHCR submission to the UPR, pp.1-2.

<sup>5</sup> Ibid., p. 2.

<sup>6</sup> Ibid., p. 4.

<sup>7</sup> OHCHR, Regional Office for the Pacific, *Human Rights in the Pacific – Country Outlines 2012*, p. 130, available at [http://pacific.ohchr.org/docs/HR\\_Pacific\\_v7\\_July\\_25.pdf](http://pacific.ohchr.org/docs/HR_Pacific_v7_July_25.pdf).

<sup>8</sup> Geneva Convention for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field (First Convention); Geneva Convention for the Amelioration of the Condition of Wounded, Sick and Shipwrecked Members of Armed Forces at Sea (Second Convention); Geneva Convention relative to the Treatment of Prisoners of War (Third Convention); Geneva Convention relative to the Protection of Civilian Persons in Time of War (Fourth Convention); Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of International Armed Conflicts (Protocol I); Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of Non-International Armed Conflicts (Protocol II). For the official status of ratifications, see Federal Department of Foreign Affairs of Switzerland, [www.eda.admin.ch/eda/fr/home/topics/intla/intrea/chdep/warvic.html](http://www.eda.admin.ch/eda/fr/home/topics/intla/intrea/chdep/warvic.html).

<sup>9</sup> Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime.



- <sup>10</sup> Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Adoption of an Additional Distinctive Emblem (Protocol III). For the official status of ratifications, see Federal Department of Foreign Affairs of Switzerland, [www.eda.admin.ch/eda/fr/home/topics/intla/intrea/chdep/warvic.html](http://www.eda.admin.ch/eda/fr/home/topics/intla/intrea/chdep/warvic.html).
- <sup>11</sup> 1951 Convention relating to the Status of Refugees and its 1967 Protocol; 1954 Convention relating to the Status of Stateless Persons; 1961 Convention on the Reduction of Statelessness.
- <sup>12</sup> International Labour Organization Convention No. 29 concerning Forced or Compulsory Labour; Convention No. 105 concerning the Abolition of Forced Labour; Convention No. 87 concerning Freedom of Association and Protection of the Right to Organise; Convention No. 98 concerning the Application of the Principles of the Right to Organise and to Bargain Collectively; Convention No. 100 concerning Equal Remuneration for Men and Women Workers for Work of Equal Value; Convention No. 111 concerning Discrimination in Respect of Employment and Occupation; Convention No. 138 concerning Minimum Age for Admission to Employment; Convention No. 182 concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour.
- <sup>13</sup> International Labour Organization No. 169 concerning Indigenous and Tribal Peoples and International Labour Organization Convention No. 189 concerning Decent Work for Domestic Workers.
- <sup>14</sup> Constitution of Tonga, arts. 1-5 and 7-20 ; also OHCHR, Regional Office for the Pacific, *Human Rights in the Pacific – Country Outlines 2012*, p. 130 (see endnote 7).
- <sup>15</sup> OHCHR, Regional Office for the Pacific, *Torture prevention in the Pacific: Sharing good experiences and lessons learnt*, December 2011, p. 19, available at [http://pacific.ohchr.org/docs/Torture\\_prevention\\_in\\_the\\_Pacific\\_Dec\\_2011.pdf](http://pacific.ohchr.org/docs/Torture_prevention_in_the_Pacific_Dec_2011.pdf).
- <sup>16</sup> OHCHR, Regional Office for the Pacific, *Human Rights in the Pacific – Country Outlines 2012*, p. 126 (see endnote 7).
- <sup>17</sup> UNHCR submission to the UPR, p. 4.
- <sup>18</sup> *Ibid.*, p. 3.
- <sup>19</sup> OHCHR, Regional Office for the Pacific, *Human Rights in the Pacific – Country Outlines 2012*, p. 130 (see endnote 7); see A/HRC/8/48.
- <sup>20</sup> UNHCR submission to the UPR, p. 3.
- <sup>21</sup> The following abbreviations have been used for this document:
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|------|---|
| CERD | Committee on the Elimination of Racial Discrimination |
| CRC  | Committee on the Rights of the Child                  |
- <sup>22</sup> For the official titles of special procedures, see [www.ohchr.org/EN/HRBodies/SP/Pages/Themes.aspx](http://www.ohchr.org/EN/HRBodies/SP/Pages/Themes.aspx) and [www.ohchr.org/EN/HRBodies/SP/Pages/Countries.aspx](http://www.ohchr.org/EN/HRBodies/SP/Pages/Countries.aspx).
- <sup>23</sup> OHCHR Report 2011, p. 316, available at [http://www2.ohchr.org/english/ohchrreport2011/web\\_version/ohchr\\_report2011\\_web/allegati/23\\_Asia.pdf](http://www2.ohchr.org/english/ohchrreport2011/web_version/ohchr_report2011_web/allegati/23_Asia.pdf).
- <sup>24</sup> For a summary of the events, see OHCHR, Regional Office for the Pacific, *Torture prevention in the Pacific: Sharing good experiences and lessons learnt*, December 2011, pp. 17-19 (see endnote 15).
- <sup>25</sup> OHCHR, Regional Office for the Pacific, *Human Rights in the Pacific – Country Outlines 2012*, p. 132 (see endnote 7).
- <sup>26</sup> OHCHR, Regional Office for the Pacific, *Torture prevention in the Pacific: Sharing good experiences and lessons learnt*, December 2011, p. 21 (see endnote 15).
- <sup>27</sup> OHCHR, Regional Office for the Pacific, *Human Rights in the Pacific – Country Outlines 2012*, p. 133 (see endnote 7).
- <sup>28</sup> *Ibid.*, pp. 130-131.
- <sup>29</sup> *Ibid.*, p. 131.
- <sup>30</sup> See also UN Women press release, “UN Women Executive Director Michelle Bachelet to attend high level meeting of Pacific Leaders in Cook Islands,” New York, 24 August 2012, available at <http://www.unwomen.org/2012/08/un-women-executive-director-michelle-bachelet-to-attend-high-level-meeting-of-pacific-leads-in-cook-islands/>.
- <sup>31</sup> OHCHR, Regional Office for the Pacific, *Human Rights in the Pacific – Country Outlines 2012*, p. 131 (see endnote 7); Government of Tonga and UNICEF, *A Situation Analysis of Children, Women and Youth*, 2006, p. 43.
- <sup>32</sup> OHCHR, Regional Office for the Pacific, *Human Rights in the Pacific – Country Outlines 2012*, p. 131 (see endnote 7).

- <sup>33</sup> Ibid.
- <sup>34</sup> OHCHR, Regional Office for the Pacific, *Torture prevention in the Pacific: Sharing good experiences and lessons learnt*, December 2011, p. 20 (see endnote 15).
- <sup>35</sup> Ibid., p. 22.
- <sup>36</sup> Ibid., pp. 20-21.
- <sup>37</sup> A/HRC/11/4/Add.1, paras. 2441-2442.
- <sup>38</sup> OHCHR, Regional Office for Pacific, *Human Rights in the Pacific – Country Outlines 2012*, p. 131 (see endnote 7).
- <sup>39</sup> Ibid.
- <sup>40</sup> UNDP, Pacific Centre Annual Report 2011, p. 7.
- <sup>41</sup> UNDP, Discussion Paper, “Achieving Debt Sustainability and the MDGs in Small Island Developing States: The Case of Tonga,” 10 December 2010, p. 8.
- <sup>42</sup> UNHCR submission to the UPR, p. 1.
- <sup>43</sup> Ibid.
- <sup>44</sup> Ibid., p. 3.
- <sup>45</sup> OHCHR, Regional Office for the Pacific, *Human Rights in the Pacific –Country Outlines 2012*, p. 133 (see endnote 7).
- <sup>46</sup> UNDP, Discussion Paper, “Achieving Debt Sustainability and the MDGs in Small Island Developing States: The Case of Tonga,” 10 December 2010, p. 7.
- <sup>47</sup> UNDP Newsroom, “UNDP responds to the Asia Pacific disasters,” press release, 9 October 2009.
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