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## **National report submitted in accordance with paragraph 5 of the annex to Human Rights Council resolution 16/21\***

### **Tonga**

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## **I. Introduction**

1. The Working Group on the Universal Periodic Review (Working Group) reviewed the Kingdom of Tonga's first national report on 14 May 2008.<sup>1</sup> During the interactive dialogue before the Working Group, Tonga received 42 recommendations. On 19 May 2008, the Working Group adopted its report on Tonga's first universal periodic review.<sup>2</sup> On 13 June 2008, the Human Rights Council adopted the outcomes from the Working Group's report on Tonga's universal periodic review, containing 31 recommendations for Tonga.<sup>3</sup>

2. Since the adoption of the outcomes of Tonga's universal periodic review, Tonga has worked to implement the recommendations that it accepted, and commitments through all relevant parties, including government agencies, official institutions, and civil society organizations.

## **II. Methodology and process for preparing second report**

### **A. Methodology for preparing the report**

3. On 27 January 2012, His Majesty's Cabinet approved the establishment of the Government UPR Working Group to consult, write, and present Tonga's second National Report on Universal Periodic Review to the United Nations Human Rights Council. The Working Group consisted of the Prime Minister's Office as Chair; the Ministry of Foreign Affairs as Deputy Chair, and the Attorney General's Office.<sup>4</sup>

4. Cabinet also identified support Government agencies from the: Ministry of Justice; Ministry of Education, Women's Affairs and Culture; Ministry of Lands, Environment, Climate Change and Natural Resources; Tonga Defence Services; Ministry of Police; Prisons Department; Ministry of Health; Ministry of Education and Training; Ministry of Internal Affairs. Cabinet also called on non-governmental and civil society organizations to assist where they could.

### **B. Process for preparing the report**

5. A four-day workshop was held in Tonga in February 2012 to provide technical advice on the preparation of Tonga's second national report. The workshop was jointly facilitated by the Office of the High Commissioner for Human Rights (OHCHR), the Pacific Islands Forum Secretariat (PIFS), and the Secretariat of the Pacific Community's (SPC) Regional Rights Resource Team (RRRT), with funding support from the Kingdom of Netherlands.

6. This workshop provided an opportunity for the UPR stakeholders to reflect on the UPR process, and to discuss key challenges, past achievements and progress.<sup>5</sup> This workshop also established a structural framework for formulating and distributing tasks to stakeholders to provide relevant information to the Government's UPR Working Group to prepare this report.

7. This report was submitted to Cabinet, who then approved its submission to the Human Rights Council.

### **III. Action taken regarding recommendations from the Kingdom of Tonga's first Universal Periodic Review**

#### **A. Democratization and law reforms**

##### **1. Continue and speed up the democratization process<sup>6</sup>**

8. In 2010, Tonga implemented the most profound constitutional and political reforms in its 137 years history of modern Westminster-type government. The late Monarch, His Majesty King George Tupou V, who passed away prematurely on 18 March 2012, was the main force behind implementing the reforms, when he announced that he would transfer nearly all of his executive authority from the Monarch to an elected Cabinet, and his continued involvement in submitting His Majesty's views on specific aspects of the reforms.

9. As reported in the first national report, the constitutional and political reform process took its first expressive form in 2004. This was when the then Prime Minister, HRH Prince 'Ulukalala Lavaka Ata, now the current Monarch, His Majesty King Tupou VI, announced the acceptance of the Prime Minister's recommendation by his father, the late His Majesty King Taufa'ahau Tupou IV, to appoint elected representatives from the Legislative Assembly as Cabinet Ministers. Before that, the Monarch appointed Ministers to take office subject to the Monarch's pleasure, but Ministers were not elected.

10. Another watershed event that followed was the establishment of a Royal-sanctioned committee on political reform in 2005, the appointment of the first non-Noble to be Prime Minister in 2006, and the establishment of a parliamentary tri-partite committee to carry out wide public consultations to determine the appropriate constitutional and political reforms for Tonga.

11. Tonga's first national report ended with the last national election that took place in April 2008, which proved to be the last national election under the old constitutional and political structure.

12. In July 2008, the legislature enacted the Constitutional and Electoral Commission Act 2008, which established an independent five member Constitutional and Electoral Commission (CEC).<sup>7</sup> The Act prescribed that the Cabinet nominate the Chairman; the Nobles Representatives nominate one Commissioner; the Peoples Representative nominate another Commissioner, and the then existent Judicial Services Commission nominated two Commissioners, and all Commissioners would be appointed by Privy Council.<sup>8</sup>

13. The Act gave the Commission the mandate to propose constitutional and political reforms regarding the Executive Government, the Legislative Assembly, the relationship between the Legislature and the Executive Government, and the electoral system.<sup>9</sup>

14. The Act also created a 10-month timeframe for the Commission to complete its work. This commenced 10 days after the five Commissioners are appointed, to the submission of an interim report within five months, to holding a National Constitutional Convention, if deemed necessary by the Commission, within seven months, and then the submission of the final report to the Privy Council and the Legislative Assembly within 10 months.<sup>10</sup>

15. The Act also set out the methodology for the CEC to use, which included considering reports, public submissions by His Majesty, the Nobles and legal and other expert advice commissioned by the Commission, and the formulation and publication of reports.<sup>11</sup>

16. The Privy Council appointed the five-member Commission in January 2009. A former Chief Justice chaired the Commission, with the other members being an heir to one of the Noble titles of the Realm, two academics and one law practitioner.<sup>12</sup> The Commission submitted its interim report in June 2009 and then the final report in November 2009. The Commission did not deem it necessary to convene a national convention.

17. The Legislative Assembly considered the Commission's final report in December 2009, which contained 82 recommendations, supported by draft legislation to implement the recommendations. The Assembly accepted most of the recommendations, and made changes to some and rejected a handful.

18. The Government was then referred the resolutions of the Assembly to finalise and submit to the Assembly the appropriate legislation that would implement the Assembly's resolutions. This resulted in the enactment of legislation that amended the Constitution, the Legislative Assembly Act, the Government Act, and the Electoral Act. The reform legislation introduced new legislation in the form of the Electoral Commission Act and the Electoral Boundaries Act. All the reform legislation was enacted by November 2010.

19. Tonga had its first general election under the new constitutional and political structure on 25 November 2010.

20. The most significant reforms were:

- The Monarch remained Head of State, but no longer was the Head of Government;
- The Monarch retained his personal royal prerogatives such as veto power, granting of Royal Pardons, granting of titles of honour and hereditary titles and hereditary estates, and the appointment of diplomatic representatives to foreign countries;
- The Monarch also retained some of his executive royal prerogatives, such as being the Commander in Chief of the defence forces, and appointment of judicial officers and the Attorney General;
- The number of Peoples Representative was increased from 9 to 17, however the nobles representatives were retained at 9 seats, to be elected by the 33 noble title holders, making a total of 26 seats in the Legislative Assembly;
- The 26 representatives then elected from amongst them one Representative to be appointed by the Monarch as Prime Minister;
- The Prime Minister would then nominate from the Elected Representatives or up to four persons from outside the Legislative Assembly, to be appointed by the Monarch as Cabinet Ministers;
- The Prime Minister may allocate or re-allocate Ministerial portfolios to Cabinet Ministers;
- Cabinet became the highest executive body, replacing the Privy Council;
- The Cabinet members consisted of the Prime Minister and not more than 11 Cabinet Ministers;
- The power to take a vote of no confidence was introduced with time restrictions for its use;
- The Speaker is nominated by the Representatives from one of the Nobles representatives to be appointed by the Monarch;
- The Deputy Speaker is nominated by the Representatives to be appointed by the Monarch;

- The creation of the office of the Lord Chancellor to be the administrative head of the judiciary, and the Lord Chief Justice being the professional head of the judiciary;
- The express Constitutional recognition of the independent office of the Attorney General;
- The insertion of a Constitutional provision to protect the principles of the rule of law and judicial independence; and
- The establishment of the Judicial Appointments and Discipline Panel to replace the Judicial Services Commission.

21. Agreement was near universal that no reform would be proposed to remove the position of the Monarchy, or to change the land tenure system.

22. In December 2010, Lord Tu'ivakano, a Nobles Representative to the Legislative Assembly was nominated by the Assembly to be appointed by the Monarch as Tonga's first elected Prime Minister. The new Prime Minister then went on to nominate nine Representatives from the Assembly, two were Nobles Representatives and seven were Peoples Representatives, plus two Non-Elected Representatives from outside the Assembly, to be appointed by the King as Cabinet Ministers. As expected with a new Cabinet, there was a number of re-shuffling of Ministerial portfolios by the Prime Minister in his first year and a half in office.

23. This regular re-shuffling surprisingly was a basis for the submission to the Speaker of a motion for a vote of no confidence by the Peoples Representatives who were members of the Human Rights and Pro-Democracy Party. This motion was tabled in June 2012 and it took four months to consider. It culminated in the rejection of the motion on 4 October 2012 by a vote of 13-11.

**2. Continue to request technical assistance and financial support to redraft the Kingdom's Constitution<sup>13</sup>**

24. Tonga accepts that the constitutional and political reforms introduced in 2010 is not permanent, and will be used and tested during the first couple of years until a more permanent system is reached. Accordingly, Tonga will continue to seek training and technical assistance to mould its constitutional and political system to that which it is comfortable.

25. The European Union, and the Governments of New Zealand and Australian provided generous technical assistance for the work of the CEC.

26. In September 2008, the Legislative Assembly in conjunction with the Commonwealth Parliamentary Association, the UNDP and New Zealand's International Aid and Development Agency (NZAID) hosted a workshop on parliament and the media.

27. The Attorney General's Office is in the process of convening parliament refresher course and public awareness programme after two years under the 2010 constitutional and political reform.

28. Tonga is in a position to implement further reforms to the Tongan Constitution using its own legislative drafting resources; however, technical assistance is still needed from legal or other expert advisors, and to cover administrative expenses for holding workshops or meetings.

**3. Continue to uphold the core values that are in the Tongan constitutional and customary history, in its work to ensure full compliance with human rights and fundamental freedoms for all Tongans<sup>14</sup>**

29. Tonga continues to be committed to maintaining the core human right values that are protected in the Tongan constitution. These include: the right to live in freedom; freedom to own and dispose property; freedom from slavery; equality of application of laws to all, regardless of gender, class, ethnicity or any classification; freedom of worship; freedom of expression; freedom of petition; freedom from unlawful detention (habeas corpus); right to fair trial; protection from double jeopardy; and, protection from unlawful arrest and search.

**B. Thematic human rights issues**

**1. Consider ratification of the Convention against Torture<sup>15</sup>**

30. Although Tonga has not taken steps to ratify the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT), it is submitted that Tongan laws and its judicial system have been effective in dealing against torture and other cruel inhuman treatment.

31. Tonga is the only country in the South Pacific Region that has accepted submissions based on breaches of the CAT, even when Tonga had not ratified the Convention and did not have an anti-torture provision in its Constitution.<sup>16</sup>

32. The Supreme Court in *Tavake v Kingdom of Tonga*<sup>17</sup> illustrates this point. The case was centred on assault, ill-treatment, and alleged torture of the plaintiff by Tongan police officers after he was arrested in relation to the 16 November 2006 riots. During the hearing, the plaintiff's counsel described his client's treatment as "torture" but also acknowledged that Tonga was not a party to the CAT.<sup>18</sup> The Chief Justice, who presided over the case, stated that it is now accepted by most international jurists that the prohibition against torture is part of customary international law, and furthermore it is *jus cogens* rule from which States cannot derogate whether they are a party to the various treaties which prohibit it or not.<sup>19</sup>

**2. Consider the implementation of recommendations by special procedures so that there are institutional safeguards against harsh treatment by police and security forces<sup>20</sup>**

33. In 2010, Tonga enacted the Tonga Police Act 2010. The Tonga Police carried out 2 years of extensive consultation before finalising the draft legislation. The Act reflects the separation of powers between the Minister and the Police Commissioner, which will provide more constabulary independence.

34. Under section 100 of the Tonga Police Act, a police officer may use reasonable and proportionate force while exercising power, however such force shall not include force that is likely to cause death or grievous bodily harm to another person, unless it is necessary to prevent death or serious injury to the police officer or another person.<sup>21</sup>

35. The Tonga Police Development Programme, which is a tri-partite partnership between the Governments of Australia, New Zealand and Tonga launched in 2008, continues to facilitate the development and transformation of Tonga Police to be an efficient and effective policing force that performs its duties with professionalism and integrity, in order to increase public trust and confidence in the Tonga Police.

36. Unfortunately, in September 2012, five police officers, together with a civilian, were charged with the manslaughter of a Tongan-born New Zealand police officer who was in Tonga to attend a family funeral, and after a social drink in town, he was taken into police custody after he was arrested for a public drunken offence.<sup>22</sup> Priority has been given to the

prosecution in order to demonstrate that the police are also accountable and Tonga Police are capable of prosecuting their own.

37. On 25 August 2010, the Prisons Department opened prison facilities at Hu'atolitoli Prison.

38. In October 2010, Tonga enacted the new Prisons Act 2010. The new Act was processed to meet the United Nations Standard Minimum Rules for Treatment of Prisoners.<sup>23</sup> The Act ensures that prisoners have access to clean prison cells, drainage, warmth and ventilation, sufficient clothing and drinking water.<sup>24</sup>

39. Prison officers are authorised to use force. However, such force can only be used to make a prisoner comply with an order made against the prisoner; to stop a prisoner from committing or attempting to commit an offence under the Act or a breach of discipline; to stop a prisoner from harming or attempting to harm himself; or to make a person who has been lawfully ordered to leave a prison and who refuses to leave a prison.<sup>25</sup>

40. Since the enactment of the new Prisons Act, there have been no complaints of excessive use of force against prisoners, but there continues to be escaped convicts for reasons other than escaping any torture or other cruel or inhumane treatment by prison officers.

**3. Promote the human rights education programmes for police, security and penal personnel<sup>26</sup>**

41. The Tonga Police Development Program continued to aim at improving infrastructure, resources, and skills capability.<sup>27</sup>

42. The Tonga Police, Tonga Defence Services and the Prisons Department through separately held annual conferences and ad hoc training for commissioned officers, discuss their legal duties, procedures and practices, which often include human rights related issues such as rights of persons taken into custody, rights of prisoners and rights of civilians.

**4. Adopt measures to strengthen the protection of freedom of expression, information and the press<sup>28</sup>**

43. Clause 7 of the Constitution guarantees the freedom of expression.

44. On 13 February 2012, Tonga convened a national consultation meeting regarding a draft freedom of information policy for Government.<sup>29</sup> This is a key step in the Government's push towards greater transparency and accountability as part of its ongoing democratic reform process.<sup>30</sup>

45. On 22 June 2012, the Cabinet approved the draft freedom of information policy. On 28 June 2012, the Government's freedom of information policy was formally launched. On 21 September 2012, the Implementation Plan was launched with implementation by phases until May 2013. By then, draft legislation will be submitted to the Legislative Assembly to strengthen access to information.<sup>31</sup> Ministries have appointed Information Officers, and they are predominantly women.

46. On 3 April 2012, Tonga celebrated the World Press Freedom Day.<sup>32</sup> So far, the media remain unregulated, and are only held accountable through the Courts under the law of defamation, sedition, or contempt of court.

47. There are currently seven newspaper operators in Tonga, two television channels and 5 radio stations that provide news everyday for the Kingdom.

48. Tonga is a signatory to the United Nations Declaration of Human Rights, in which Article 19 states that everyone has the right to freedom of opinion and expression, including

the right to hold opinions without interference and to seek, receive and impart information and ideas through any media regardless of frontiers.<sup>33</sup>

## 5. Pay increased attention to persons with disabilities<sup>34</sup>

49. Tonga signed the Convention on the Rights of Persons with Disabilities (CRPD) on 15 November 2007.<sup>35</sup>

50. Tonga was Part of the Pacific-wide research program “Capacity Development for Effective and Efficient Disabled People’s Organisations in Pacific Island Countries in 2011.”<sup>36</sup>

51. There are two national cross- disability DPOs- Naunau ‘o e Alamaite Tonga Association (NATA) and Tonga National Disability Congress (TNDC).<sup>37</sup> These two NGO’s promote Disabled People Independent Living<sup>38</sup> and it aims to strengthen the human rights of people with disabilities through abridgement of all aspects of life as, physical, mentally, emotionally, socially and spiritually.<sup>39</sup>

52. Tonga is also a signatory to the Biwako Millennium Framework for Action (BMF).<sup>40</sup>

53. In August 2011, Tonga agreed at a Pacific Government focal point meeting in Fiji to develop a Tonga National Policy for Persons with Disabilities by 2015.

54. The Mango Tree Centre for People with Disabilities is a holistic family centred rehabilitation service for people with disabilities. The Centre is run by missionaries, and they provide free rehabilitation services for children and adults.<sup>41</sup>

55. Representatives from Tonga attended the Australian Development and Disability Consortium conferences, Australian Leadership Award Fellowship programs (ALAF), Human Rights Training and other support from PDF.<sup>42</sup> This has increased the capacity of individual people with disability.<sup>43</sup>

56. There are no legally mandated provisions for persons with physical, sensory, intellectual, or mental disabilities.<sup>44</sup>

57. Tonga has disability-inclusive laws and regulations which includes the following:

- Education Act: s.52 requires compulsory education between the ages of 6 and 13 inclusive for everyone;
- Medical Services Act: s.9 provides that the primary object of the public medical service is to provide accommodation and medical and surgical aid for all Tongan subjects without individual payment;
- Retirement Fund Act: includes benefit for total and permanent disability;
- Immigration Act: prohibits class of immigrants including any person who is certified suffering from mental disorder and that his presence in the Kingdom would be a danger to the community.

58. The Ministry of Education and Training (MET) adopted the Tonga National Inclusive Education Policy in 2007, with aid from the PRIDE project. MET has written a policy on Inclusive Education and Early Childhood Education, and has an Inclusive Education class in the village of Ngele’ia with approximately 10 students with different disabilities.<sup>45</sup>

59. Community Kava clubs (such as the *Fofo’anga Kava Club*) distribute gift bags and food to the Alonga Centre and Ofa Tui Amanaki people with disabilities.<sup>46</sup>

**6. Take all the possible anti-corruption measures<sup>47</sup>**

60. In January 2012, Tonga appointed its second fully independent Attorney General appointed under the Constitution.

61. In July 2012, the Government processed amending legislation to strengthen Tonga's anticorruption mechanisms. The legislation is as follows:

- Good Governance Commission Bill 2012: This Bill provides for an overall structure, plan and leadership to a number of government bodies that operate in the law enforcement and administration fields, such as the Anti-Corruption Commissioner and Public Relations Commissioner, to make sure that they do work and that they share resources and are cost effective.<sup>48</sup> The Attorney General will chair the Commission, and a Director will provide the chief executive officer duties.
- Anti-Corruption Commissioner (Amendment) Bill 2012: This Bill proposes to amend the Anti-Corruption Commissioner Act 2007 to bring it under the umbrella of the Good Governance Commission.
- Commissioner for Public Relations Commissioner (Amendment) Act: This Bill amends the name of the office to that of Ombudsman in order that it is widely recognised, and align it with the Good Governance Commission.

62. In September 2011, a Regional Ombudsman Conference was held in the island group of Vava'u in conjunction between the Pacific Ombudsman Alliance and the Tongan Legislative Assembly.<sup>49</sup> Tonga is a member of the Pacific Ombudsman Alliance.

**C. National human rights institution**

**1. Pursue its efforts to create a national human rights institution in compliance with Paris Principle<sup>50</sup>**

63. Tonga is still in a position that it cannot establish a national human rights institution due to the financial and technical resources available, and the limited human resources it has. However, Tonga is taking the necessary action to comply with the Paris Principles several actions taken by the government are in line with the Principles relating to the Status of National Institutions 1993 (Paris Principles). For example, the Good Governance Commission Bill will bring together the anti-corruption agencies. It is submitted this Commission satisfies clauses 1 and 3(a) of the Paris Principles.<sup>51</sup>

64. The Tongan courts also promote the use of International Conventions, which is also in line with clause 3(b) of the Paris Principles.<sup>52</sup>

**2. To create, if not a national human rights institution, at least one at the level of the group of islands it belongs to, so that they may more effectively improve their human rights performance and implement their human rights obligations**

65. There are several regional and international Agencies which provide support to Pacific countries including Tonga to effectively improve their human rights performance and implement their human rights obligations, including the:

- Pacific Islands Forum Secretariat;
- Secretariat of the Pacific Community – Regional Rights Resource Team;
- UNDP Pacific Resource Centre;
- and the UNOHCHR.

66. The Pacific Plan was approved by Pacific Leaders in October 2005, and Objective 12.1 supports the objective of establishing a regional ombudsman and other human rights mechanisms.<sup>53</sup>

67. In 2011, a regional working group was established and mandated by the Forum Regional Security Committee to investigate the possibility of establishing a regional human rights mechanism. Tonga was represented at the 1st High Level consultation to discuss the regional human rights mechanism held in December 2011. The issue is still on the table for further dialogue in the region.

68. In June 2012, Tonga was a part of the Conflict Prevention Workshop, and the main theme of the workshop was Exploring Pacific Government and Civil Society Roles for Advancing Human Security in the Pacific.<sup>54</sup>

## **D. Gender equality**

### **1. Promote education and improve the ratio of women in leading positions<sup>55</sup>**

69. Tonga has made commitments on the international, regional and national level to improve women's political participation.

70. Commitments made on the international level, includes commitments to:

- the Millennium Development Goals for promoting gender equality and empowerment of women;<sup>56</sup>
- the UN Fourth World Conference on Women, Beijing 1995;<sup>57</sup>
- the United Nations 23rd Special Session of the General Assembly (UNGASS), 2000, New York (Beijing +5);<sup>58</sup>
- Beijing Platform for Action (BPfA);<sup>59</sup> and its subsequent revisions such as in the 49th session of the United Nations Commission on the Status of Women in March 2005;<sup>60</sup>
- the Commonwealth Plan of Action for Gender Equality and its subsequent revisions 2005–2015;<sup>61</sup>
- the UN Security Council Resolution 1325 on Women, Peace and Security;<sup>62</sup>
- and the commitments made to the Commonwealth Heads of Government in the Harare Declaration 1991.<sup>63</sup>

71. Commitments made on the national level, includes:

- the passing and approval in 2001 of the National Policy on Gender and Development (GAD);<sup>64</sup>
- Government's Strategic Development Plans and Frameworks (SDP and TSDF);<sup>65</sup>
- Recommendation by Tongan parliamentarians to the Commonwealth Parliamentary Association (CPA);<sup>66</sup>
- and the Convention on the Rights of the Child ensuring the girl child's participation.<sup>67</sup>

72. The Education Policy Framework 2004-2019 provides that a core value of policy is the respect for human rights and the well-being and development of the people. The policy emphasizes the right of every individual to be given the opportunity to be involved in decision making in relation to themselves and their work and should have the opportunity to use their individual talents for the benefit of the people as a whole.<sup>68</sup>

73. Camp GLOW toured the Tongan Parliament; it was aimed at inspiring and empowering young women to become female leaders in the future.<sup>69</sup>

74. Women are slowly being represented in managerial and higher administrative positions in both government. For instance in May 2006, the first woman was appointed to a ministerial position<sup>70</sup>, and since then two other women have been appointed to a ministerial position, including Tonga's present Minister of Education.<sup>71</sup> Women have also been appointed as acting ministers.

75. There has been an increase of women in executive level of Government including the current Chairperson of the Public Service Commission, the Governor of the National Reserve Bank. Tonga, the Chief Executive Officer for Education and Training, the Chief Executive Officer of the Public Service Commission, the Chief Executive Officer for Revenue Services, the Secretary for Justice. The second most senior level also hold numerous women, particularly in Revenue Services, Finance and National Planning, Internal Affairs, Tonga Police, Education and Training, Infrastructure, Agriculture, Lands, Environment and others.

76. In the public enterprises there are women who are chairpersons of the board of directors, directors, chief executive officers or at deputy level. These include Tonga Communications Corporation, the Waste Authority Limited, and the Ports Authority.

77. Women also hold prominent roles in the private sector with the President of the Chamber of Commerce and Industries, and other medium to small business owners who are women.

78. There are also ordained ministers in the Free Wesleyan Church of Tonga and Anglican Church. In 2012 the first female ordained minister was nominated as a candidate to be the leader of the Free Wesleyan Church of Tonga, which is the largest congregation in Tonga in 2012. However no women were elected to the new Parliament in November 2010.<sup>72</sup>

## 2. Curb violence against women<sup>73</sup>

79. Tonga is committed to eliminating violence against women.

80. In 2007 the Ministry of Police designated the Domestic Violence Unit and in 2010, adopted a No Drop policy.

81. There have been different studies made on Violence Against Women in Tonga, including:

- a UN Volunteer CEDAW Information Research Report (2005);<sup>74</sup>
- Pacific Prevention of Domestic Violence Programme (PPDVP) Baseline Review of Tonga (2007);
- Tonga Police committed to addressing Violence (2008);<sup>75</sup>
- Women and Children Crisis Centre Report (WCCC) (January 2010);<sup>76</sup>
- and the Update of PPDVP Baseline In-country review Tonga Report (January 2011). The key successes of this update was the establishment of a Domestic Violence Unit in the Central Police Station and the domestic violence response "no drop" policy<sup>77</sup>; Tonga – A Situation Analysis of Women, Children and Youth: Government of Tonga with assistance of UNICEF;<sup>78</sup>
- and a National Study Against Domestic Violence Against Women (2012) by the NGO *Ma'a Fafine mo e Famili* (For Women and Children).

82. The Pacific Prevention of Domestic Violence Programme (PPDVP) has been working with national police forces to better prevent and respond to domestic violence since 2006.<sup>79</sup>

83. Tonga launched its first National Study on Domestic Violence against Women as part of the national activities to mark international women's day in 2011. The study showed that 77% of Tongan women and girls surveyed have experienced physical or sexual violence in their lives by a partner or non-partner.<sup>80</sup> The report has also put forth recommendations on the steps to be taken to limit violence against women.

84. In March 2011, Tonga was chosen for the first country visit of the Pacific Island Forum's Reference Group on Sexual and Gender Based Violence (SGBV).<sup>81</sup> This was based on a strong presentation by the Tonga delegation to the 2010 Forum Regional Security Committee Meeting on the inroads the Tongan Government had taken to address domestic violence and violence against women issues.<sup>82</sup> The Reference Group identified that the Police Domestic Violence Unit is very effective since its establishment in 2007.<sup>83</sup> For instance from January to December 2008, there were 280 reported cases, which increased by more than two hundred percent for the same period in 2010.<sup>84</sup> Tonga was also amongst the first country to commit to establishing an SGBV committee.<sup>85</sup>

85. The Reference Group also identified that one of the main challenges facing both government and non-government organizations in addressing sexual and gender based violence is the lack of funding and resources. The Tonga Police<sup>86</sup>, and the Attorney General's Office, amongst others, faced resource and capacity limitations including personnel and equipment. The Reference Group agreed to encourage and support the development of specific legislation to address Domestic Violence and Violence Against Women, noting sexual and gender based violence was a cross-cutting and cross sectoral.<sup>87</sup>

86. Because of the visit from the Reference Group, Tonga had requested the assistance from SPC to draft a new, comprehensive violence against women (VAW) legislation.<sup>88</sup> This support by Government was brought about under the "Changing Legislation for the Protection of Women" project in 2010, which is being coordinated and implemented by a Country Focal Officer, under the Government and its Ministry of internal Affairs and the SPC.

87. The Bill was submitted from the SPC in September 2012. The Bill is intended to provide protection from domestic violence for all members of the family, introduce the use of temporary and permanent protection orders, clarify the duties of the police and promote the health, safety and well-being of victims of domestic violence, along with other related matters.<sup>89</sup>

88. The Bill was available in the last quarter of 2012 to the public to submit public comment, before it is submitted to the Legislative Assembly in 2013. The Bill is processed by the Attorney General's Office, together with the Ministry of Internal Affairs (MIA), which is the Ministry that now holds the Women's Affairs portfolio. This is a positive step forward in ensuring Government's policies are in line with the needs and issues of civil societies and communities, thus ensuring sustainable development.

### **3. Integrate a gender perspective in the follow-up process to the review<sup>90</sup>**

89. The "National Policy on Gender and Development: towards gender equity, harmonious society and a better future for all" was developed and endorsed in 2001. It identifies areas of focus like gender and family, religion and society. A review of this policy has been completed.<sup>91</sup>

90. The Tongan government has also developed a new medium term national development plan, the Tongan Strategic Development Framework, to guide its activities for

the period 2011–2014 including the empowerment of women and eradication of hardships, to build strong inclusive communities, by engaging districts, villages, communities in meeting their prioritized service needs, and ensuring prioritized and equitable development of benefit by one of the strategies on the implementation of the national policy on gender and development and better formulation and implementation of outer island and rural development programmes through local communities.<sup>92</sup>

91. The Reproductive Health Policy developed in 2008, with the assistance of the UNFPA, is focused on attaining and providing a “high standard of health and quality living through improved reproductive health care services for all the people of the Kingdom of Tonga, at all levels, irrespective of status, sex, age or creed”.<sup>93</sup>

92. The Ministry of Commerce, Tourism and Labour through the support and direction of the Minister developed a National Strategy on “Women in Business”.

93. Work is under way with the assistance of the Asian Development Bank and AusAID, to review ministries and department corporate plans, which are expected to be linked to the budget process, aligning the national, ministry or department objectives, and resource allocation. This provides a critical window for opportunity to better integrate gender equality concerns into the organizational work programmes of every ministry and department.<sup>94</sup>

#### **4. Enact laws to protect women in employment free from any form of discrimination<sup>95</sup>**

94. Tonga has made several policy changes and legislative reforms pertaining to the rights of women to employment. For instance, in 2010, the Public Service Commission<sup>96</sup> instituted a new policy to extend maternity leave from one month to three months for public servants, and five days is granted as paternity leave for the male counterpart.<sup>97</sup> This policy is an important step towards supporting women’s participation in the labour force as well as supporting breastfeeding and infant health under the Millennium Development Goal 4.<sup>98</sup>

95. The Ministry of Agriculture, Food, Forests and Fisheries in 2008 created a division called Food, Women and Youth Community Development to support the development of women in their communities, notably through agricultural activities such as vegetable gardens.<sup>99</sup>

96. Women are allowed to participate in the Seasonal Worker’s Scheme offered by New Zealand in 2008, followed by Australia in 2009.<sup>100</sup> It is estimated that 8% of Tongan seasonal workers who went to New Zealand were women. However, there have been difficulties in monitoring their jobs, because some women get pregnant during the course of their working tenure.

97. The Ministry of Commerce, Tourism and Labour through the support and direction of the Minister developed a National Strategy on Women in Business.<sup>101</sup>

98. The Public Service Commission is responsible for human resource management policies for the whole of government.

99. Except for the Police, which indicated that its domestic violence and investigation units have gender responsibilities in their position descriptions, none of the ministries or departments reported having positions with gender related terms of reference or job descriptions, either at the executive or technical/operational levels.

100. The Attorney General’s Office has four Crown counsel who have received specialised training on women’s issues, including advocacy, law reform and policy formulation. There are no performance management systems in place to monitor gender-mainstreaming action.<sup>102</sup>

**5. Consider signing and ratifying CEDAW and consider especially articles 15 and 16 relating to equal right of women to administer property and the equal right of both spouses in respect of the ownership, acquisition, management, enjoyment and disposal of property<sup>103</sup>**

101. A lot of preparatory work was undertaken since 1999 with RRRT, UNIFEM, UNDP, SPC, NZAid and AusAID on CEDAW reflecting the importance as well as the sensitivities surrounding it. This included the following:

<i>Date</i>	<i>Summary of intervention</i>
Since RRRT began in 1995.	Support to the Catholic Women's League to conduct community consultations on CEDAW.
2005	Received a request from Tonga WDC/PMO's August 2005 to conduct a CEDAW Legislative Compliance. To be undertaken prior to September 2005 in preparation for the Commonwealth Parliamentarians Meeting. Supported a RRRT officer to work in Tonga for approximately one week on preparing the legislative analysis of Tonga's laws in compliance with CEDAW. This document was attached to the Cabinet submission seeking ratification of CEDAW in 2008.
2005	Prepared CEDAW Ten questions and answers on Why should Tonga ratify CEDAW. Technical assistance on booklet, translations and copies. Document submitted with the Cabinet paper. Document distributed by the then Legal Rights Training Officer Betty Blake in her community consultations.
2005	In support of WDC's of the Tongan Government's commitment to ratify CEDAW and action plan, two activities were highlighted for RRRT support. Legislative compliance and the second activity was a series of workshops for key stakeholders to develop a commitment towards CEDAW.  RRRT provided technical assistance in conducting a 5-Day workshop on CEDAW for key government stakeholders and focal points. This was conducted from 8–10 June 2005.
September 2006	Invited by the WDC Tonga- Technical assistance on a two-day workshop for parliamentarians on support to ratification of CEDAW. RRRT provided technical support with RRRT legal adviser and support legal trainer Ratu Joni Madraiwiwi to facilitate consultation with MPs.
February 2007	Support and technical advice to the WDC/PMOs on support of the strategy on ratification of CEDAW.
November 2008	Technical Support - Human rights adviser facilitated consultation in partnership with SPC /HDP and UN Women – with a CEDAW Ratification 3 day workshop conducted for non – ratified countries (Palau, Nauru and Tonga). Participants included government representatives.
2008	In 2008, Tonga's legislature passed a resolution to ratify CEDAW, Resolution Number, 6/2008.

2009	RRRT provided support with advice to Women's Division on the submission to cabinet on support for ratification of CEDAW.
	On 28 August 2009, parliament voted not to ratify the Convention because of CEDAW articles supposedly allowing marriages between homosexuals, permitting abortions as well affecting land ownership in Tonga's patriarchal and patrilineal land system. In addition, it said we could not ratify with reservations, because the Convention requires that State Parties must address all the requirements within a short period after ratification.
2011	Government directed the drafting of Reservations on CEDAW as a way forward to consider signing of the Convention.
2012	Draft CEDAW Reservations completed by Government.

102 The previous Parliament in 2009 did not agree to ratify CEDAW despite the recommendations made by members of the Legislative Assembly, the Constitutional and Electoral Commission and other Non- Government organizations.<sup>104</sup>

103. However, in December 2011, the current Government approved to conduct nationwide consultations to reach a consensus as a way forward to consider the ratification of CEDAW.<sup>105</sup> Tonga is currently drafting its reservations to CEDAW.

104. Despite not ratifying CEDAW, Tonga has fulfilled its commitments made under the United Nation's Beijing Forward Looking Strategies (1996) and the regional Pacific Platform of Action for Women (PPA).<sup>106</sup>

105. In 2008, Tonga set up a Royal Land Commission to look into the land issues in Tonga. The Royal Land Commission recommended that women should not be granted tax allotments for bush and farming purposes because it has never been the traditional role of Tongan women to do heavy and hard labour work which was associated with farming.<sup>107</sup> The Royal Land Commission stated in its Final Report that international equality concepts to land can take away ancient and highly valued institutions from the very core of Tongan culture, for instance the *fahu* system.<sup>108</sup>

106. The Royal Commission also recommended that a woman who is a Tongan subject upon attaining the age of 21 years has the right to apply for grant of a town allotment, which can be registered under her name. Upon her death, the land shall devolve according to the succession laws, which shall be amended accordingly. For now, women should not be allowed to apply for and gain a registered tax allotment, the status quo should remain with men being allowed to hold tax allotment.<sup>109</sup>

107. The Royal Land Commission also recommended the termination of an unmarried daughter's right upon proof of her having committed adultery or fornication is repealed.<sup>110</sup>

108. The Royal Land Commission also recommended that the restriction on the inheritance of a daughter when she married should be removed. Where there is no male heir of the deceased landholder, his daughters shall succeed the land.<sup>111</sup>

109. The Royal Land Commission *also* recommended that the rights of a widow to land that has been newly acquired by her husband should allow her to lease or mortgage the land with the consent of the heir, and where she had no children with her husband, then consent is not required.<sup>112</sup>

## **E. Promotion and protection of human rights, education and public awareness**

### **1. Strengthen efforts in the area of human rights education, training of public officials and on the participation of civil society in the promotion and protection of human rights, including through international and regional cooperation<sup>113</sup>**

110. Efforts have been made to strengthen human rights education, training of public officials and the participation of civil society in the promotion and protection of human rights through international and regional cooperation. Specific training programmes have been undertaken by the SPC-RRRT:

#### **(a) 2011(training programmes undertaken):**

- Regional training for lawyers, MPs and judicial officials;
- Placement of Country Focal Officer under the MIA under the “Changing Legislation Protecting Women” project to support activities on CEDAW, human rights reporting, violence against women legislation and HIV;
- Support to government and civil society in developing relevant legislation to combat violence against women – ongoing;
- Provision of training on strategies on advancement of legislative change on violence against women for government, civil society (regional consultation);
- Technical Support to Tonga on National consultation and instructions to legislative drafters on VAW legislation completed;
- Support to civil society actors in human rights: NGOs, Community Paralegals, and Church leaders. Support to disability organisations in implementing the Convention on the Rights of Persons with Disabilities;
- Support to Universal Periodic Review reporting process for the UN Human Rights Council; provision of training, mentoring, reviews and information;
- Pacific Women’s Empowerment Dialogue: Stopping Violence Against Women, 2-4 November 2011, which was hosted by Australia, together with the United States and the Pacific Islands Forum Secretariat.

#### **(b) 2012 (training programmes undertaken):**

- Joint civil society & government partnerships – how to lobby and advocate for human rights and gender compliant legislation;
- Tonga MP’s consultation on drafting instructions for legislative change on violence against women • Strategic law campaigns on VAW comprehensive legislation; HIV Rights, employment Reforms;
- Pacific Fellows Women’s Rights Program 2012, hosted by the American Bar Association of Law Initiative together with the University of the South Pacific;
- Human Rights Reporting including training for civil society on UPR reporting;
- Training Workshop on Legislative Lobbying: Building Skills in Governance and Leadership- facilitated by the Ministry of Education, SPC/RRRT and FWRM, the main aim of the training is to equip leaders in the Pacific with knowledge and skills on legislative change process building on knowledge of governance, civic education, leadership and human rights.<sup>114</sup>

- Both Government and Non-Government Organizations committed to ongoing dialogue and making the process of developing both the State and CSO report transparent and inclusive;<sup>115</sup>
- The CSO taskforce was established in 2011 specifically to look into monitoring of human rights issues and violations in Tonga,<sup>116</sup>
- Asia Pacific Feminist Legal Theory and Practice Training, hosted by the Asia Pacific Forum on Women, Law and Development, Dhaka, Bangladesh, 1 to 5 October 2012;
- Annual Pacific Islands Lawyers Consultation on Human Rights laws in the Courts, Nadi, Fiji, 29 October to 2 November 2012.

## **2. Continue to step up its efforts in the promotion and protection of human rights<sup>117</sup>**

111. The Civil Society Forum of Tonga facilitated a community development workshop in September 2012 to bring together representatives from a wide range of development sectors to review, develop and identify areas for community focused on capacity building in the Kingdom. Areas of interest included youth development, disability, health, education, gender issues, rural community development, human rights and environment sustainability.<sup>118</sup>

112. Tonga was the sixth country to be studied in a Pacific- wide research program known as “Capacity Development for Effective and Efficient Disabled People’s Organizations (DPOs).<sup>119</sup>

113. The Catholic Women’s League conducted a four-day workshop aimed at raising people awareness on the CRC and CERD.<sup>120</sup>

114. Representatives from the New Zealand ITM Cup and Super Rugby team assisted the Pacific Prevention of Domestic Violence Programme (PPDVP) by participating in an advertisement to raise awareness for Domestic Violence and to promote “Break the Silence, End the Violence”.<sup>121</sup>

## **3. Request technical assistance and financial support to improve education services<sup>122</sup>**

115. Tonga has actively participated in the workshop on the development of open educational resources (OERs) in New Zealand in 2007.<sup>123</sup>

116. Tonga has also actively participated in Open and Distance Learn (ODL) for agriculture and rural development in 2007 and in 2009–2012.<sup>124</sup>

117. The Ministry of Education has developed better policies and systems for open, distance, technology, mediated learning, and quality models and materials.<sup>125</sup>

118. The Education Policy Framework 2004-2019 (MOE 2004) provides that a core value of the policy is the respect for human rights and the well-being and development of the people.<sup>126</sup> The policy emphasizes the right of every individual to be given the opportunity to be involved in decision-making in relation to themselves and their work and should have the opportunity to use their individual talents for the benefit of the people as a whole.<sup>127</sup>

119. Tonga is committed to the Pacific Education Development Framework- Vision Impairment (PEDF-VI) 2011-2015.<sup>128</sup>

120. PRIDE projects provided funds for Inclusive Education, which has been successfully established in Tonga.<sup>129</sup>

121. Open School has now been established in Tonga, and 2 students are currently studying in Tonga College, Atele.<sup>130</sup>

**4. Continue its endeavours towards better serving its people by securing a higher standard of human rights<sup>131</sup>**

122. Tonga has launched its freedom of information policy as discussed above.<sup>132</sup> The policy is designed to improve the accountability and transparency of Government.<sup>133</sup>

123. Tonga is also processing a Legal Aid Bill to provide for a legal aid scheme to provide legal assistance in civil, domestic and criminal matters in worthwhile cases to needy people in Tonga, and for related matters.<sup>134</sup>

124. Tonga is the highest-ranking Pacific regional state in the United Nations Development Programme (UNDP) human development index. Its current placing at number 55 in a survey of 177 countries classified the Kingdom as achieving high human development.<sup>135</sup>

**5. Attentively follow-up on the requests for capacity-building and technical assistance on human rights<sup>136</sup>**

125. Regional Human Rights training offered by SPC-RRRT for Pacific Magistrates and Lawyers annually. Tonga is a participant in these trainings.

126. New Zealand had committed 1.5million to support the democratic reform process in Tonga.<sup>137</sup>

127. National consultations workshop on Tonga's social development issues, gender policy (GAD) and capacities for peace (CPAD) 20 August 2012 - This was a joint national consultation in partnerships between the Australian Government AusAid Program, the United Nations Development Program and the Government's Women Affairs Department of the Ministry of Internal Affairs. Its focus was on the Reviewed National Policy on Gender and Development (GAD) and strengthening its Capacities for Peace and Development (CPAD).<sup>138</sup>

128. The SPC and Kingdom of Tonga Joint Country Strategy 2009-2013 in support of Tonga's Strategic Development Plan 9 2009-2013 provides for the need to have capacity building training.<sup>139</sup>

129. The Joint Country Strategy noted that SPC will provide technical assistance to link the Tonga Youth Strategy with the Pacific Youth Strategy 2010, as well as design and assist the development of a Youth Media Centre facility, including staff capacity building.<sup>140</sup>

130. Tonga hosted a regional workshop to address regional and national needs to establish fortified cyber security measures on 29 April 2011. The key points on the agenda included the threat of cybercrime; international standards for cybercrime legislation; criminal and procedural law; cybercrime training for police; judges and prosecutors; and the cooperation between law enforcement agencies and internet service providers.<sup>141</sup>

131. The cybercrime workshop was a follow on effort according to the Tonga Declaration, made after the Pacific Regional Information and Communication Technology (ICT) Convention on 18 June 2010. The Declaration called for the cooperation between SPC, the Council of Europe and the International Telecommunications Union (ITU) to develop policy and legislative frameworks to combat cybercrime and promote cyber security in the region.<sup>142</sup>

132. The Women and Children Crisis Centre had a Young Emerging Leaders Program (I-YEL) from April 2010- March 2011. Its aim was to encourage, prepare, and challenge young people from diverse backgrounds to be advocates for human rights and with a special focus on women and children's rights, environmental and social change and the overall goal of promoting the Elimination of violence against women and children.<sup>143</sup>

133. Tongan Parliamentarians had a one-day advocacy forum on Child Rights and Real Time Sentinel Monitoring for Tongan Parliamentarians – aim is to provide Parliamentarians with an overview on child rights and to highlight the evidence collected during a real time sentinel monitoring that was conducted by UNICEF.<sup>144</sup>

## **F. Treaty ratifications, treaty reporting and overall work with human rights mechanisms**

### **1. Consider ratification of core international human rights treaties and optional protocols (ICCPR, ICESCR, CEDAW, CAT, and CRC OPs)<sup>145</sup>**

134. Tonga is currently drafting its reservations to the CEDAW, and intends to present these draft reservations for public comment before depositing them together with the instrument of accession.

135. Although Tonga has not considered ratifying ICCPR, the Courts in Tonga have referred to and applied this convention.

136. In *R v Vola* [2005] Tonga LR 404 the court did not hesitate in applying international cases and the International Covenant on Civil and Political Rights (ICCPR), notwithstanding that they did not apply directly to Tonga or that Tonga had yet to ratify the covenant. It was recognized that the principles set out in the covenant and in the numerous authorities cited were reflective of the circumstances exercised in relation to the death penalty. The court was not hindered by the Kingdom's non-ratification.<sup>146</sup>

137. Although Tonga has not considered ratifying CAT, the Courts in Tonga have applied this convention.

138. In *Fangupo v R* [2010] Tonga LR 124 the Court of Appeal set aside a sentence of whipping of young male offenders. The Court of Appeal held that whipping could be considered unlawful in Tonga, despite the existence of statutory provisions authorising whipping. The prohibition against torture is part of customary international law and is a rule from which states cannot derogate, whether or not they are a party to the various treaties such as CAT, which prohibit it.<sup>147</sup>

139. Although Tonga has not considered ratifying ICESCR and CRC-OPS, principles in ICESCR are incorporated in the Tongan laws, which include a right to adequate health care, right to an education, and the right to a decent home, food and shelter, the right to fair wages and equal remuneration for work of equal value, right to take part in cultural life.

- Education Act: s.52 requires compulsory education between the ages of 6 and 13 inclusive for everyone.
- Medical Services Act: s.9 provides that the primary object of the public medical service is to provide accommodation and medical and surgical aid for all Tongan subjects without individual payment.
- Retirement Fund Act: includes benefit for total and permanent disability.
- Nationality (Amendment) Act 2007: allows Tongan women who marry non- Tongan citizens, and their children, to retain their Tongan nationality.
- Criminal Offences (Amendment) Act 1999: allows marital rape to be prosecuted.<sup>148</sup>

**2. To submit regularly its reports to the treaty bodies of the conventions it is party to (CRC and CERD)<sup>149</sup>**

140. Tonga accepts that it has been lacking on the submission of regular reports, however this has been due to lack of human resources, domination of other priorities and lack of financial resources. Tonga undertakes to improve on its reporting record for the next round of the UPR.

141. Tonga released the draft CRC Initial Report of Tonga in October 2006 for public comment.<sup>150</sup> A workshop was further held on 12 April 2007 to discuss the CRC Initial Report; this was with representatives of government ministries, UNICEF, churches and NGOs, which provided a very conducive environment for collaborative input into the finalization of the CRC Initial Report.<sup>151</sup>

142. Tonga has submitted 13 reports to the Committee on the Elimination of Racial Discrimination.<sup>152</sup> Due to human resource and financial constraints, Tonga has several outstanding reports for the period 2001 to 2007.

143. Although Tonga has not provided for the Convention on the Rights of a Child in domestic legislation, the Courts have applied the Convention in the process of interpretation.

144. In *Tone v Police* [2004] Tonga L.R.144 the Supreme Court held that although the CRC was only enforceable by an enactment of legislation, the need for the CRC arose from the widely accepted realization of the need for children to be treated differently from adults in relation to police and court proceedings. Even without the domesticating legislation, the Court was entitled to refer to the terms of the CRC as a guide on what was the acceptable form of treatment for children.<sup>153</sup>

**3. Advice potential donor agencies of the type of technical assistance that would help to meet treaty body reporting obligations<sup>154</sup>**

145. Tonga has been working with both regional and international organizations as reported above, particularly the SPC, UNDP and PIFS, on the type of technical assistance that it requires helping meet its treaty body reporting obligations.

**4. Seek to renew its request for assistance to the OHCHR and through the UPR Trust Fund established specifically to assist the implementation of recommendations emanating from UPR<sup>155</sup>**

146. OHCHR, Pacific Islands Forum and the Secretariat of the Pacific Community-Regional Rights Resource Centre jointly facilitated a workshop in February 2012 providing an opportunity for the government working group and co-opted members and NGO's to reflect on the UPR process.

147. Tonga will indeed continue to seek assistance from this facility in future.

**5. Continue cooperating with civil society in the implementation of the outcome (UPR Process)<sup>156</sup>**

148. The civil society was part of the workshop facilitated by OHCHR in February 2012 to reflect on the UPR process.<sup>157</sup>

**6. Share its experience of the UPR with other Pacific Island States<sup>158</sup>**

149. Tonga's first UPR report (2008) was published on the OHCHR and UPR website with easy access for other Pacific Island States to see.

150. Tonga's UPR was used as an example in the Pacific Capacity- Building Seminar on the Universal Periodic Review to other Pacific Islands that have not submitted a report.<sup>159</sup>

**7. Participating more fully with international human rights mechanism, especially with special procedure<sup>160</sup>**

151. Since the first national report, the Working Group responsible for providing this report is not aware of any special requests regarding international human rights mechanism. Tonga accepts this could be because there is no central authority to deal with human rights issues. Tonga will recommend to Cabinet to identify an existing Government agency to be responsible for human rights issues within Tonga.

*Notes*

- <sup>1</sup> A/HRC/WG.6/2/TON/1.
- <sup>2</sup> A/HRC/8/48.
- <sup>3</sup> A/HRC/DEC/8/130.
- <sup>4</sup> Cabinet Decision number 45 of 27 January 2012.
- <sup>5</sup> Final UPR Tonga Program 2012.
- <sup>6</sup> Recommendation 1 and 2 – Holy See and Switzerland.
- <sup>7</sup> Constitutional and Electoral Commission Act 2008, Act number 5 of 2008 passed by the Legislative Assembly on 22 July 2008, received Royal Assent on 23 July 2008, and further amended by the Legislative Assembly on 3 November 2008 by Act number 23 of 2008, which received Royal Assent on 6 November 2008 (CEC Act).
- <sup>8</sup> CEC Act, Schedule 1, clause 1(1).
- <sup>9</sup> CEC Act, Schedule 2.
- <sup>10</sup> CEC Act, Schedule 3.
- <sup>11</sup> CEC Act, ss, 5, 6, 7 and 9.
- <sup>12</sup> The Commissioners were: the Chairman was the former Tongan Chief Justice Gordon Ward, now Sir Gordon Ward of Turks and Caicos; Hon 'Alipate Tu'ivanuavou Vaea, as he then was, now Lord Vaea of Houma, Nobles Representative to the Legislative Assembly and Minister of Internal Affairs; Dr Sitiveni Halapua, now Peoples Representative to the Legislative Assembly; Dr 'Ana Maui Taufe'ulungaki, now Non-Elected Representative to the Legislative Assembly and Hon Minister of Education and Training; and, Sione Fonua, politician and law practitioner of the Supreme Court of Tonga and barrister and solicitor of the High Court of New Zealand.
- <sup>13</sup> Recommendation 20 – Bangladesh.
- <sup>14</sup> Recommendation 26 – Algeria.
- <sup>15</sup> Recommendation 5 – Switzerland, Czech Republic, Canada, Turkey.
- <sup>16</sup> United Nations Office of the High Commissioner for Human Rights (OHCHR) Regional Office for the Pacific, A region-wide assessment of laws on the prevention of torture and other ill-treatment of detainees (2009) 3.
- <sup>17</sup> [2008] Tonga LR 304.
- <sup>18</sup> United Nations Office of the High Commissioner for Human Rights (OHCHR) Regional Office for the Pacific, A region-wide assessment of laws on the prevention of torture and other ill-treatment of detainees (2009) 3.
- <sup>19</sup> United Nations Office of the High Commissioner for Human Rights (OHCHR) Regional Office for the Pacific, A region-wide assessment of laws on the prevention of torture and other ill-treatment of detainees (2009) 3.
- <sup>20</sup> Recommendation 4 – Canada.
- <sup>21</sup> Tonga Police Act 2010, s.100(2).
- <sup>22</sup> Police v Hala'ufia and ors.
- <sup>23</sup> Moleni F Taufu, Tonga Prison Department, 23rd Asia and Pacific Conference of Correctional Administrators (29 August 2003)1.
- <sup>24</sup> Prison Act 2010, s.112 (2).
- <sup>25</sup> Prisons Act 2010, s 97.
- <sup>26</sup> Recommendation 31 – Canada.

- <sup>27</sup> Tonga Aid Programme <http://www.aid.govt.nz/where-we-work/pacific/tonga> (2012).
- <sup>28</sup> Recommendation 21 and 22 – France , Canada, Republic of Korea.
- <sup>29</sup> Tonga Government engages in National Consultation in its commitment to a Freedom of Information Policy (16 February 2012) Ministry of Information and Communication.
- <sup>30</sup> Tonga Government engages in National Consultation in its commitment to a Freedom of Information Policy (16 February 2012) Ministry of Information and Communication.
- <sup>31</sup> Final Consultation on new Freedom of Information Policy (19 June 2012).
- <sup>32</sup> Lord Tu'ivakano wishes to acknowledge World Press Freedom Day [www.mic.gov.to](http://www.mic.gov.to) (03 April 2011).
- <sup>33</sup> Lord Tu'ivakano wishes to acknowledge World Press Freedom Day [www.mic.gov.to](http://www.mic.gov.to) (03 April 2011).
- <sup>34</sup> Recommendation 28 – Slovenia.
- <sup>35</sup> United Nations (2011). “Convention and Optional Protocol Signatures and Ratifications”, on the United Nations Enablewebsite, accessed from [www.un.org/disabilities/countries.asp?navid=12&pid=166](http://www.un.org/disabilities/countries.asp?navid=12&pid=166) on 17 October 2011.
- <sup>36</sup> Pacific Disability Forum (PDF) and Australia Pacific Islands Disability Support (APIDS) – Capacity Development for Effective and Efficient Disabled Persons Organizations in Pacific Island Countries – Tonga (March 2012) 3.
- <sup>37</sup> Pacific Disability Forum (PDF) and Australia Pacific Islands Disability Support (APIDS) – Capacity Development for Effective and Efficient Disabled Persons Organizations in Pacific Island Countries – Tonga (March 2012) 4.
- <sup>38</sup> Pacific Disability Forum (PDF) and Australia Pacific Islands Disability Support (APIDS) – Capacity Development for Effective and Efficient Disabled Persons Organizations in Pacific Island Countries – Tonga (March 2012) 5.
- <sup>39</sup> Pacific Disability Forum (PDF) and Australia Pacific Islands Disability Support (APIDS) – Capacity Development for Effective and Efficient Disabled Persons Organizations in Pacific Island Countries – Tonga (March 2012) 6.
- <sup>40</sup> Pacific Disability Forum (PDF) and Australia Pacific Islands Disability Support (APIDS) – Capacity Development for Effective and Efficient Disabled Persons Organizations in Pacific Island Countries – Tonga (March 2012) 13.
- <sup>41</sup> Pacific Disability Forum (PDF) and Australia Pacific Islands Disability Support (APIDS) – Capacity Development for Effective and Efficient Disabled Persons Organizations in Pacific Island Countries – Tonga (March 2012) 13.
- <sup>42</sup> Pacific Disability Forum (PDF) and Australia Pacific Islands Disability Support (APIDS) – Capacity Development for Effective and Efficient Disabled Persons Organizations in Pacific Island Countries – Tonga (March 2012) 16.
- <sup>43</sup> Pacific Disability Forum (PDF) and Australia Pacific Islands Disability Support (APIDS) – Capacity Development for Effective and Efficient Disabled Persons Organizations in Pacific Island Countries – Tonga (March 2012) 16.
- <sup>44</sup> Bureau of Democracy, Human Rights and Labour, 2011 Human Rights Report: Tonga (2011).
- <sup>45</sup> PRIDE <http://rowintonga.blogspot.com/2010/09/pride.html> (30 September 2010).
- <sup>46</sup> Josephine Latu, Season of giving helps out less fortunate (26 December 2010).
- <sup>47</sup> Recommendation 29 – Republic of Korea.
- <sup>48</sup> Good Governance Commission Bill explanatory notes (2012) 1.
- <sup>49</sup> Tonga's democratic government- one year on [www.mic.gov.to](http://www.mic.gov.to) (5 December 2011).
- <sup>50</sup> Recommendation 23 and 24 – Canada, France.
- <sup>51</sup> 51 Paris Principles- s.1 A national institution shall be vested with competence to promote and protect human rights. S.3(a) To submit to the Government, Parliament and any other competent body, on an advisory basis either at the request of the authorities concerned or through the exercise of its power to hear a matter without higher referral, opinions, recommendations, proposals and reports on any matters concerning the promotion and protection of human rights; the national institution may decide to publicize them; these opinions, recommendations, proposals and reports , as well as any prerogative of the national institution, shall relate to the following areas...  
Refer to National Human Rights Institutions- History, Principles, Roles and Responsibilities, Office of the United Nations High Commissioner for Human Rights 27.
- <sup>52</sup> 52 S.3(b) To promote and ensure the harmonization of national legislation, regulations and practices with the international human rights instruments to which the State is a party, and their effective

- implementation.
- <sup>53</sup> Graham Leung, National and Regional Institutions for Human Rights (presentation) SPC/RRRT (2011).
- <sup>54</sup> 54 Outcome Statement: Conflict Prevention Workshop for FRSC Officials 2012 [http://www.peaceportal.org/articles/-/asset\\_publisher/9mYE/content/id/129951394](http://www.peaceportal.org/articles/-/asset_publisher/9mYE/content/id/129951394) (04 June 2012).
- <sup>55</sup> Recommendation 10 – Algeria.
- <sup>56</sup> ‘Ofa Guttenbeil, Advancing Women’s Representation in Tonga (2008) 7.
- <sup>57</sup> ‘Ofa Guttenbeil, Advancing Women’s Representation in Tonga (2008) 7.
- <sup>58</sup> ‘Ofa Guttenbeil, Advancing Women’s Representation in Tonga (2008) 7.
- <sup>59</sup> ‘Ofa Guttenbeil, Advancing Women’s Representation in Tonga (2008) 8 *The BPFA is an agenda for women’s empowerment. It aims at accelerating the implementation of the Nairobi Forward-looking Strategies for the Advancement of Women and at removing all the obstacles to women’s active participation in all spheres of public and private life through a full and equal share in economic, social, cultural and political decision-making. It sets a 30 per cent target for women at all levels of decision-making.*
- <sup>60</sup> ‘Ofa Guttenbeil, Advancing Women’s Representation in Tonga (2008) 7 *Article 7 with support of Articles 4 & 5 deals with women’s representation in politics and decision-making.*
- <sup>61</sup> ‘Ofa Guttenbeil, Advancing Women’s Representation in Tonga (2008) 8 *The Commonwealth focuses on four critical concerns (1) Gender, democracy, peace and conflict; (2) Gender, human rights and law (3) Gender, poverty eradication and economic empowerment; (4) Gender and HIV/AIDS. Critical concern 1 reiterates the 30 per cent target for women in decision making by 2015.*
- <sup>62</sup> ‘Ofa Guttenbeil, Advancing Women’s Representation in Tonga (2008) 8 *For governments to ensure a gender perspective and participation of women in the peace dialogue and decision-making processes of the country.*
- <sup>63</sup> ‘Ofa Guttenbeil, Advancing Women’s Representation in Tonga (2008) 9 *Commonwealth Heads of Government agreed that gender equality is a fundamental principle.*
- <sup>64</sup> ‘Ofa Guttenbeil, Advancing Women’s Representation in Tonga (2008) 6.
- <sup>65</sup> ‘Ofa Guttenbeil, Advancing Women’s Representation in Tonga (2008) 7 *Clear gender commitments are made in Strategic Development 7 – which is linked directly to the Gender and Development Policy.*
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