

Fourth cycle Universal Periodic Review of Tonga



Joint Submission of the United Nations Country Team

UNITED NATIONS



NATIONS UNIES

Office of the Resident Coordinator

Fiji, Solomon Islands, Tonga, Tuvalu, Vanuatu

Street Address: Level 8, Kadavu House, 414 Victoria Parade, Suva, Fiji • Mail Address: Private Mail Bag, Suva, Fiji Phone: (679) 9103370 • Fax. (679) 330 1718 • Website: <http://www.pacific.un.org>

List of submitting UN entities:

- United Nations Office of the High Commissioner for Human Rights [UNOHCHR]
- United Nations Development Fund [UNDP]
- United Nations Children's Fund [UNICEF]
- United Nations Entity for Gender Equality and the Empowerment of Women [UN Women]
- International Labour Organization [ILO]
- International Organization for Migration [IOM]
- United Nations Population Fund [UNFPA]
- International Fund for Agriculture Development [IFAD]
- World Health Organization [WHO]
- United Nations on Drugs and Crime [UNODC]

Introduction

1. In preparation of the fourth Universal Periodic Review (UPR) of Tonga during the 43rd UPR Working Group session from April to May 2023, this submission is made by UN agencies that work in and/or cover Tonga. The submission is based on available information at the time of submission, and does not attempt to provide a comprehensive review of the human rights situation in Tonga.
2. The UN Country Team in the Pacific (henceforth 'UNCT') hopes that the fourth UPR will be seized by the government and stakeholders to engage in and exchange views to take stock of the human rights situation in the country since the last review in January 2018. It encourages the government to use the outcomes of the fourth UPR to ensure the promotion and protection of all human rights for all in Tonga.
3. UNCT encourages Tonga to seek technical cooperation with the United Nations system in order to ensure enhanced compliance with international human rights in law and in practice.

1. BACKGROUND AND FRAMEWORK

A. Treaty ratification, reporting and cooperation with UN human rights mechanisms

Acceptance of international norms and Cooperation with treaty bodies

4. No concrete progress has been made since the last UPR with regard to the ratification of core international human rights treaties to which Tonga is not yet a state party. Tonga is a State party only to two of the nine core international human rights treaties, namely to the International Convention on the Elimination of All Forms of Racial Discrimination and the Convention on the Rights of the Child.
5. While Tonga had accepted the recommendations to ratify core international human rights treaties during the second cycle of the universal periodic review, it has only noted the recommendations to same effect during the third UPR cycle.
6. There has been notable opposition against gender-related commitments. Previous efforts made in 2015 towards the ratification of the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), albeit with a number of reservations pertaining to the accession to the throne, nobility, abortion and same-sex marriage, were stalled as a result of public protest, particularly by religious leaders, congregations, some women's groups, and other community leaders citing concerns that the international treaty might jeopardise existing legislation and disrupt social norms or would mean legalising same-sex relationships and abortion. There has been no progress towards its ratification to date.
7. Although Tonga issued a standing invitation to Human Rights Council Special Procedures Mandate Holders in 2013, to date, there have been no visits. Visits requested by the Working Group on discrimination against women and the Special Rapporteur in the field of cultural rights in 2015 and 2019, respectively, are yet to take place pending government response.
8. It is commendable that Tonga fulfilled its reporting obligations under the Convention on the Rights of the Child by submitting its long-overdue initial report in 2018 and

participated in a constructive dialogue with the Committee on the Rights of the Child in 2019. Tonga is yet to submit its long-overdue periodic report to the Committee on the Elimination of Racial Discrimination (since 2001).

9. Tonga ratified the ILO Worst Forms of Child Labour Convention, 1999 (No. 182) on 4 April 2020. It was the last ILO member State to do so, thus achieving universal ratification of this fundamental convention. Further, Tonga is on track to report to the ILO on its obligations under C 182 in a timely way in 2022.
10. UNCT recommends that Tonga accelerate steps taken to ratify the core international human rights treaties, including the International Covenant on Civil and Political Rights, the International Covenant on Economic, Social and Cultural Rights, the Convention on the Elimination of All Forms of Discrimination against Women, the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, and the Convention on the Rights of Persons with Disabilities. It also recommends that Tonga fulfil its reporting obligations under the International Convention on the Elimination of All Forms of Racial Discrimination. It further recommends that Tonga invite special procedures or accede to their visit requests.

B. Constitutional and legislative framework

11. In May 2017, the Government of Tonga proposed an amendment to the Constitution with a view to empowering the Prime Minister to appoint the Attorney General, the Police Commissioner and the Anti-corruption Commissioner (in lieu of the Privy Council and the King). In August 2017, the King dissolved the Legislative Assembly and ordered new elections to be held in November 2017. That decision was reportedly taken after the Speaker of the Legislative Assembly had raised concerns about the proposed constitutional amendment, which had been deemed unconstitutional, the approval by the Government of the process of ratification of the Convention on the Elimination of All Forms of Discrimination against Women and a regional trade agreement, which were seen as an attempt to bypass the King and the Privy Council.
12. UNCT recommends that Tonga continue the reform and amendment of the Constitution to widen the country's democratic space and respect for human rights.

C. Institutions and policies

13. The Ombudsman's Office, established in December 2016 replacing the Office of the Commissioner for Public Relations, is responsible for investigating complaints received from all persons related to administrative actions and decisions made by any public department, enterprise or other public body, or by any officer, including any Minister or Governor. However, to date, Tonga still has no national human rights institution in place.
14. Tonga does not have a stand-alone, permanent governmental structure that serves as a national mechanism for reporting and follow-up (NMRF). Rather, Tonga reports to international human rights mechanisms in an ad hoc manner.
15. UNCT recommends that Tonga establish an independent national human rights institution in compliance with the principles relating to the status of national institutions for the promotion and protection of human rights (Paris Principles) as a matter of priority. UNCT also recommends that Tonga consider transforming existing ad hoc

structures into a national mechanism for reporting and follow-up in order to engage with United Nations human rights mechanisms in a constructive and systematic manner

2. IMPLEMENTATION OF INTERNATIONAL HUMAN RIGHTS OBLIGATIONS

A. Equality and non-discrimination

Discrimination against women

16. Under Tonga's 1875 Constitution and subsequent Amendments, there is a general guarantee of equality which states that the laws of Tonga shall apply to all people regardless of class. The constitution does not explicitly prohibit discrimination based on sex, sexual orientation, gender identity and expression, and sex characteristics.
17. Under the Land Act 2016 Revised Edition, male heirs and their descendants are given precedence in inheritance law.¹ Non-financial contributions and property accumulated during marriage are not taken into account during divorce proceedings, with division of property therefore favouring men over women.²
18. In the 2018 Tonga Disability Survey, a high proportion of people with disabilities, particularly women with disabilities, reported they faced significant difficulties when travelling, shopping, going out in public places, or participating in elections.
19. UNCT recommends that Tonga prioritize gender equality, as well as increase women's participation at all levels of social, political and economic decision-making in government. It also recommends that Tonga repeal all legal provisions that discriminate against women and make gender responsive legislative changes including in matters relating to ownership of property, land and assets. UNCT further recommends that Tonga accelerate efforts to promote and protect human rights of women with disabilities and address needs and challenges they face.

Gender-based violence

20. Gender-based violence is a pervasive issue in Tonga. The most recent national survey on domestic violence was conducted in 2009, and nationally representative data on gender-

¹ All land in Tonga belongs to the monarch. Tongan men over the age of 16 can apply for a grant or lease of a rural tax allotment for farming purposes or a town allotment for residential purposes.

² Widows are entitled to a life estate in any tax or town allotment of her deceased husband, although this is terminated if she re-marries or if there is proof in legal proceedings that she has 'committed fornication or adultery'. The barriers faced by women in property and land inheritance mean that women with no income or assets may be forced to stay in households with violent family members and husbands. Despite formal rules on land leasing, informal leasing is widespread. Informal leasing is generally dependent on kinship arrangements because goodwill from male kin and their wives is often necessary for women to obtain leases. Gender stereotypes about Tongan women remain pervasive with traditional customs and Christian values that have been interpreted as justifying paternalistic social hierarchy.

based violence was collected in the 2019 Tonga Multiple Indicator Cluster Survey.³

21. Key achievements on domestic violence issues under the National Women's Empowerment and Gender Equality Tonga Policy include the establishment of the Family Protection Legal Aid Centre in 2018 under the Ministry of Justice and Prisons which has now opened a new branch in Vava'u to provide much needed legal services for the people of the Vava'u, Niuafu'ou and Niutaoutapu outer islands; the renovated office for the Domestic Violence Unit with a safe space for children at the Central Nuku'alofa Police Station; the 24/7 counselling helpline through the Tonga Women and Children's Centre, development and launch of the Gender Based Violence App in 2021 and the Tonga National Centre for Women and Children and the launch of the Tonga National Service Delivery Protocol for Multisectoral Response to Cases of Gender Based Violence. In March 2021 Tonga's Cabinet approved a Sexual Harassment Policy for the Tonga Public Service, following technical assistance from the ILO.
22. The Women and Children Crisis Centre (WCCC) was established in 2009 and provides free counselling, legal guidance, and support for survivors, as well as 24 hours of free accommodation to women and children in Mo'ui Fiefia Safe House. There are also preventive efforts⁴ to help curb gender-based violence, such as male advocacy training to end violence towards women and children, as well as to tackle discriminating attitudes.⁵
23. The Family Protection Legal Aid Centre, established following the introduction of the FPA, noted in 2018 that 20% of domestic violence cases reported to the Centre were not being reported to the police because of trust problems or fears of being shamed. According to news media, between January and June 2020, only 18.4% of the 537 reported cases were successfully prosecuted.
24. In 2021 the Tonga National Service Delivery Protocol for Multisectoral Response to Cases of Gender Based Violence (SDP) was launched with the objective to guide the coordination of multi-sectoral service delivery for survivors of gender-based violence.⁶

³ According to the 2019 Multiple Indicator Cluster Survey, 26.4% of ever-married women had experienced emotional, physical, or sexual violence in their lifetime. Among all women aged 15-49 surveyed 15.2% reported that they had experienced physical violence from a non-partner since the age of 15. The most common perpetrators of non-partner physical violence were family members, including mothers and step-mothers (10.0%) and fathers and step-fathers (3.2%). The prevalence rate recorded in the 2019 Multiple Indicator Cluster Survey is significantly below the prevalence of non-partner physical violence recorded in the 2009 National Study, in which 68% of women reported that they had experienced physical violence from a non-partner in their lifetime. Among all surveyed women in 2019, 3.2% reported that they had experienced sexual violence from a non-partner since the age of 15, with the most common perpetrator of non-partner sexual violence identified as 'employer/someone at work', accounting for 18.7% of perpetrators

⁴ The Family Protection Act 2013 (FPA) was enacted to tackle domestic violence in Tonga. It provides protection for all members of a family. In the 2016 revisions, the FPA legally defined what was classified as a 'domestic relationship' by extensively outlining various forms of relationships with the aim of providing more comprehensive protection for women and children. In 2019, the Tonga Family Protection Counselling Framework was developed to inform and guide the establishment of the national registry known as the National Panel of Counsellors which was launched later in the same year.

⁵ The joint UNDP and UN Women coordinated integrated service delivery platform called "REACH" connects government agencies and civil society organisations in order to deliver services to vulnerable communities in a timely and effective manner with a targeted focus of ensuring that services for women are included.

⁶ The Protocol is led by the Ministry of Internal Affairs, Women's Affairs and Gender Equality Division and was developed to coordinate and guide the national response of services to survivors of gender-based violence. The Protocol provides an agreed set of procedures and minimum standards to ensure a survivor-centred approach, continuity of care across the preparedness-emergency-recovery continuum and more positive outcomes for survivors, their families, and the communities of Tonga.

25. In line with global trends, there has been an increase in domestic violence during the COVID-19 pandemic, particularly over the initial months of the COVID-19 lockdown. In Tonga, the WCCC recorded 54 percent increase in the number of cases referred to the centre between February-April 2022.⁷
26. UNCT recommends that Tonga takes measures to:
- a. Ensure meaningful inclusion and engagement and the full participation of civil society and feminist organisations in the Regional Working Group on Family Protection Act/Domestic Violence;
 - b. Prioritize the primary government member of the RWG is a representative of the national women’s machinery with the alternate member from another relevant government Ministry, such as Justice, Police or Health;
 - c. Recognize GBV crisis centers, shelters, counselling agencies, organisations of persons with disabilities and LGBTIQI organisations as Essential Service Providers in emergencies to ensure the provision of GBV services can operate with 24/7 access.
 - d. Amend national emergency/disaster management frameworks to include GBV service providers;
 - e. Amend relevant FPA or DV legislation to explicitly include GBV service providers as essential services in times of emergency;
 - f. Facilitate comprehensive and ongoing capacity-building and training with frontline GBV service providers to understand their roles and responsibility in responding to cases of GBV and to ensure their attitudes, behaviours and actions uphold gender equal, survivor-centered and rights-based approaches;
 - g. Consult with women and women-led organisations in the design, implementation, monitoring and review of social protection and social infrastructure as a response to GBV in the region to respond to local needs;
 - h. Ensure that primary prevention and response approaches are balanced and harmonized to ensure that people can access services and support which are promoted through primary prevention initiatives such as through men’s behaviour change programs, community radio and social media communications activities and community awareness; and
 - i. Ensure mechanisms are in place to support response actors in GBV cases, including the protection of Women’s Human Rights Defenders and all frontline personnel in emergency response, including public health crises.

Sexual orientation and gender identity

27. The Criminal Offences Act (2020 revised edition) criminalizes same-sex sexual conduct, and the punishment for the crime of ‘sodomy’ may include corporal punishment in addition to up to 10 years’ imprisonment. In practice, the law has not been used to prosecute same-sex sexual conduct between consenting adults in recent years. There are no provisions in Tongan law to protect individuals from discrimination or violence based on sexual orientation, gender identity and expression and sex characteristics.
28. There have been few reports of discrimination and violence being committed against LGBTI people in Tonga in recent years. Some sources note that stigma and

⁷ A regional analysis of violence against women during COVID-19 in Asia and the Pacific found that rates of violence were impacted by factors such as increased exposure to perpetrators during lockdowns, increased triggers of violence for perpetrators during times of stress and uncertainty, and reduced access to support services.

discrimination may prevent the reporting of incidents. The indigenous leiti population, a traditional Tongan transgender community, is said to be accepted by society. However, the President of the Tonga Leitis Association was murdered in a high-profile incident in 2021.⁸

29. UNCT recommends that Tonga, in full respect for the international human rights law principle of equality and non-discrimination, repeal the provisions of the Criminal Offences Act that criminalize same-sex sexual relations between consenting adults, and that it combats all forms of discrimination against lesbian, gay, bisexual, transgender and intersex persons and protect them from violence including by raising public awareness.

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

30. The monarch retains authority over judicial appointments and dismissals. The Judicial Appointments and Discipline Panel, a committee of the Privy Council, provides advice on appointments, including for the Lord Chancellor, who has responsibility for administering the courts. The monarch as a member of the Privy Council has final jurisdiction over cases in the Land Court relating to hereditary estates and titles. The highest court is the Court of Appeal (COA), which consists of the court president and several judges determined by the monarch. Appeals beyond the COA are brought before the monarch in Privy Council, which has both judicial and legislative powers. The judicial architecture further includes a Supreme Court, Magistrates Courts and Land Courts. Broader judicial reforms that would have increased the Cabinet's influence over judicial appointments were adopted by the Parliament in 2014, although assent from the monarch was not received to date.
31. Tonga acceded to the United Nations Convention Against Corruption in 2020, in 2021, it endorsed the Teienewa vision, the regional commitment to progress Pacific unity against Corruption. However, corruption and abuse of office are reported to be prevalent problems.⁹ Anti-corruption mechanisms are not strong, and they are under-resourced. The post of Anti-Corruption Commissioner has been vacant since its creation in 2007. The government has expressed its intention to appoint officials for the anti-corruption office through a cabinet decision.
32. Due process provisions and safeguards against arbitrary arrest and detention are typically respected by the authorities; however, there is no mechanism to guarantee access to counsel for indigent defendants. There are five prisons, one on each of the main islands.
33. UNCT recommends that Tonga:
 - a. Take Constitutional and legislative measures to ensure that judicial appointments and dismissals processes respect the independence of the judiciary;
 - b. Take measures to appoint the Anti-Corruption Commissioner and take measures to strengthen its anti-corruption mechanisms, including by allocating human, technical and financial resources and providing adequate training and powers;

⁸ A 28-year-old man received a life sentence for this murder in October 2021.

⁹ The illegal sale of Tongan passports is considered an ongoing problem. Public officials and leaders of state-owned companies are sometimes held accountable for bribery and other malfeasance. Three cabinet Ministers were removed from Parliament following conviction of election bribery for cases related to the 2021 general elections.

- c. Continue its efforts to hold public officials, leaders of state-owned companies and others accountable for bribery and other forms of corruption;
- d. Establish procedures and mechanisms to guarantee access to free legal aid for those defendants in criminal proceedings who cannot afford it;
- e. Consider taking measures to explicitly safeguard the right to information, including in the context of administration of justice.

C. Rights to freedom of opinion and expression, association and assembly

- 34. The constitution guarantees freedom of the press, and a variety of news outlets operate independently, including online. Tonga Broadcasting Commission (TBC) is government-owned and runs two television channels and two radio stations. Commercial advertising is a significant source of revenue.
- 35. It is not uncommon for politicians to use civil defamation suits and other means to retaliate against critical coverage in the press. In 2017, the then Prime Minister repeatedly complained about reporting by the state-run TBC and accused the radio and television outlet of being an enemy of government. A series of leadership changes at TBC followed later in the year: TBC's long-standing general manager was terminated in May when her contract came up for renewal; a political ally was appointed as board chair in September; and the Chief Editor and news manager were transferred to the sales department in October, raising widespread concerns among press freedom advocates.
- 36. In August 2019, it was reported that Tongan police were considering laying treason charges against people insulting the royal family on Facebook. The government was discussing blocking the platform because of escalating tensions between pro-democracy groups and supporters of the monarchy.
- 37. The constitution protects freedom of assembly, and demonstrations, though rare, generally remain peaceful. Workers have the legal right to organize in trade unions but implementing regulations have never been issued, meaning the country's various de facto trade unions generally operate as associations. Tonga joined ILO in 2016, although it has yet to ratify its conventions on labour standards.
- 38. UNCT recommends that Tonga takes effective measures to respect and protect, in law and in practice, the rights to freedom of opinion and expression, association and assembly, both in person and online. UNCT also recommends that Tonga decriminalizes defamation and rather address defamation cases under its civil code, in accordance with international standards, while ensuring that defamation charges are not improperly used with the purpose of unnecessarily and disproportionately limiting freedom of expression.

D. Abolition of death penalty

- 39. Under the Criminal Offences Act, the crimes of treason and murder can be punished by the death penalty that is carried out by hanging. Although, in practice, Tonga has not applied death penalty since 1982. UNCT recommends that Tonga take legislative measures to fully abolish the death penalty.

E. Prohibition of slavery, trafficking

- 40. While Tonga acceded to the United Nations Convention against Transnational Organized Crime UNCTOC in 2016, it is not a signatory to either of the two critical

protocols concerning TIP or Smuggling – 1) Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children, and 2) Protocol against the Smuggling of Migrants by Land, Sea and Air.

41. The Kingdom of Tonga endorsed the Migration and Sustainable Development Policy in 2021 which adopts the key guiding principles as outlined in the Constitution of Tonga. The Prohibition of Slavery is one of its key guiding principles¹⁰.
42. UNCT recommends that Tonga establish formal procedures to proactively identify victims of trafficking (VoT), alongside providing protection, recovery assistance and specialized services. UNCT also recommends that Tonga establishes a comprehensive and coordinated national anti-trafficking approach to ensure strict compliance of the anti-trafficking legislation in accordance with the international standard while participating and promoting regional and international policy dialogues to combat trafficking. Lastly, Tonga should conduct awareness raising campaigns on human trafficking, which promote informed migration decision making and which are inclusive of vulnerable populations and immigrant communities.

F. Right to work and just and favourable conditions of work

43. In the public sector, employees are entitled to 12 weeks maternity leave at full pay, or five days of paternity leave for fathers. According to the 2020 Employment Relations Bill, a female employee who expects to give birth to a child is entitled to maternity leave, from her employment for a period of 30 consecutive working days provided that the employee furnishes to her employer a certificate from a registered medical practitioner or registered nurse confirming the pregnancy and specifying the expected date of delivery of a child. The Employment Relations Bill also defines sexual harassment and spells out an employer's responsibilities should a complaint be filed.
44. UNCT recommends that Tonga consider ratifying and applying the International Labour Organisation Violence and Harassment Convention, 2019 (No. 190), and implementing its provisions in partnership with trade unions, employers' organisations and civil society. UNCT also recommends that Tonga implement equitable, inclusive, accessible, resilient and gender-responsive social protection policies and programmes for all women, including those in informal work, unpaid care and domestic work, self-employed, migrant workers, and those with disabilities or affected by long-term illnesses. Social protection policies must be grounded in a human rights-based approach and strengthened by supportive cultural practices.

G. Right to health

45. In general, the rights based approach to health was applied by the Tonga National Health Strategic Plan 2015-2020, which states that “[Universal Health Coverage] is a basic right that every citizen and resident in Tonga rightly deserves”. In the Tonga Strategic Development Framework 2015-2025 (TSDF II), it states “Inequality in health and in

¹⁰ In this government policy, it is outlined that “No person shall serve another against his will except he be undergoing punishment by law and any slave who may escape from a foreign country to Tonga (unless he be escaping from justice being guilty of homicide or theft or any great crime or involved in debt) shall be free from the moment he sets foot on Tongan soil for no person shall be in servitude under the protection of the flag of Tonga.” In addition, the Tongan Legislative Assembly passed the Employment Relations Bill 2020 which aims to establish a legal framework governing employment in Tonga and protect employees' fundamental rights and principles at work including forced labour, freedom from discrimination, equal remuneration for work of equal value and freedom of association.

education are core concepts that could be addressed in a TSDf II". Financial year 2020/21 and 2021/22 saw an increase in Government health budget, to fight against COVID-19.¹¹

46. During the COVID-19 vaccination campaign, the vaccination team made efforts to make sure that the vaccines are accessible to the most remote islands. Vaccination coverage for adults over 18 years of age has reached 99% for the first dose, meaning that those who wanted to have vaccination were able to receive the vaccine. Also, special consideration was made for the elderly and persons with disabilities, and the mobile vaccination team made home visits to vaccinate those vulnerable populations.
47. In terms of maternal health, the percentage of deliveries attended by skilled health personnel was 98.3% in 2019, which was a slight increase from 2012 (95.5%) (UNICEF) (99% in 2019 by MoH report). There are no recent official data for maternal mortality, but Ministry of Health reports no maternal death from 2016-2019 (out of 2,152 births in 2019). The total fertility rate in 2019 was an average of 2.9 children per woman. The adolescent fertility rate¹² was 30 births per 1,000 women aged 15-19 and was higher in rural (32 per 1,000) than urban (25 per 1,000) areas. 97.7% of births were attended by at least one skilled healthcare professional in 2019. In 2019, the infant mortality rate was 14.3 per 1,000 live births, and the under-5 mortality rate was 16.6 per 1,000 live births. The maternal mortality ratio was 52 per 100,000 live births in 2017.
48. Noncommunicable diseases (NCDs) continue to be a high priority. ¹³Efforts to strengthen service delivery is ongoing. The Role Delineation Policy, Package of Essential Services was endorsed which focuses on strengthening of primary health care. Some health facilities were relocated/renovated to provide better service and to be more climate resilient. Training on family medicine for medical doctors and nurse practitioners commenced/recommended to have more skilled staff at the primary health care centers. These efforts are leading to improved capacity to reach the unreached.
49. Tonga has evidence of both progress and gaps on legislation and policies regarding SRHR. The country does not have a current national sexual and reproductive health (SRH) strategy, with the most recent SRH strategic plan expiring in 2018. Emergency contraception is available, and legislation does not prohibit access to contraception¹⁴

¹¹ 58.5 million TOP or 15.4% of the recurrent budget for 2020/21, and 70.5 million TOP or 18.9% for 2021/22 were spent on health development. While most of the funding went to consumables like personal protective equipment (PPE) and lab equipment, some of the funding was utilized to strengthen the health system, including the strengthened capacity of one of the primary health centers. The development partners also contributed to preparedness and response to COVID-19, strengthening health system capacity including infection prevention and control, lab capacity, ICU beds, waste management, etc.

¹² The law allows for early marriage, with persons aged between 15 and 18 years permitted to marry. Additionally, there is no legislation that prohibits a girl's expulsion from school due to pregnancy.

¹³ Key risk factors, including obesity and raised blood pressure have worsened between 2012 and 2017 (Tonga STEPS survey 2017). Tonga National Strategy for the Prevention and Control of Non-Communicable Diseases 2021-2025 calls for the whole of Government and whole of society approach to address the issue.

¹⁴ Among married and in-union women in 2019, 29.3% were using a method of contraception, with 25.2% using a modern method. Contraceptive use was higher among rural populations; 25.6% of rural women and 23.7% of urban women used a modern method of contraception. Women aged 35-39 were most likely to use contraception; 33.7% of women in this age group were using a modern method of contraception, compared to 19.6% of women aged 20-24. Tongan women have expressed reluctance to condom use as it is associated with casual sex and promiscuity. The most common methods of contraception in 2019 were female sterilization (8.9% of married and in-union women aged 15-49) and implants (6.5%). Only 0.6% of women reported using male or female condoms. Among married and in-union women aged 15-49, 21.8% had unmet needs for family planning in 2019. In total, 22.5% of women aged 15-49 had unmet needs for family planning. Abortion is illegal in Tonga.

based on age, marital status, or disability.¹⁵ In the domain of maternal health, the Criminal Offences Act (2020 revised edition) makes abortion illegal in almost all circumstances, however post-abortion care, is not prohibited.¹⁶

50. UNCT recommends that Tonga:

- a. Implement measures to strengthen sexual and reproductive health and rights for women, including access to contraceptives and access to maternal health services.
- b. Adopt a whole of government approach to Gender Based Violence Prevention and Response and leadership in coordination at policy and services levels, strengthen linkages across ministry mandates, and through GBV in development and GBV responses during emergency situations to facilitate sustainability.
- c. Scale-up and expand services to provincial levels and to the outer lands to reduce vulnerabilities and gaps in access to life-saving services, including amendment of the legal age of marriage to universal acceptable age of 18 years, to mitigate child marriages and early unions, and the cost of SRH implications to the health and social sectors.
- d. Continue investment on health to improve health care service quality in a sustainable manner, so that the necessary health service will be accessible to all in need.
- e. Enhance whole of Government and whole of society approach, to understand and address the underlying causes of the NCD crisis.
- f. Continue strengthening primary health care and capitalize on the successful COVID-19 vaccination campaign to ensure universal health coverage.

H. Right to food

51. Agriculture is the second most important economic activity but its relative importance has declined over the years. Agriculture remains the only source of livelihoods in remote and isolated rural areas, with many households relying on small land allotments to produce their own food.¹⁷

52. In relation to nutrition and NCDs, Tonga is now the “most obese country in the world with 90 per cent of adults either obese or overweight. Average life expectancy has

¹⁵ However, the national list of essential medicines excludes female condoms and implants. Tonga lacks legislation mandating the integration of Comprehensive Sexuality Education (CSE) / Family Life Education (FLE) into the national school curriculum and a specific HIV-related legislation. The Public Health Act (2020 revised edition) references notifiable diseases but no longer lists which specific diseases are considered notifiable (including HIV).

¹⁶ Additionally, approximately 14.7% of women aged 15-24 who had sex with a non-marital, non-cohabiting partner reported that a condom was used during last sexual intercourse. Knowledge about HIV was higher among young men than young women; 15.2% of men and 9.0% of women aged 15-24 could demonstrate comprehensive knowledge of HIV in 2019. Among 15–49-year-old, 10.8% of women reported having a sexually transmitted infection (STI) or symptoms of an STI in the previous 12 months. Moreover, many sources on sexual and reproductive health and adolescent pregnancy across the Pacific note that the local culture regards sexuality as taboo. There is much cultural stigma and shame surrounding sex. This stigma prevents the communication of all topics connected to sex. This prevents adolescents and vulnerable groups such as women and disabled people from acquiring knowledge about sex and sexuality, as well as limiting access to services and knowledge of sexual and reproductive health

¹⁷ Only 5% of Tonga’s farmers are commercial producers who engage with formal markets. Tonga’s agriculture continues to be traditional subsistence farming systems based. Agriculture remains under pressure from increasing production costs, declining land availability (largely due to absentee ownership), and limited crop diversity. Fifty percent of agricultural land is left fallow for several years as a traditional means to restore soil fertility. Another factor influencing long fallow periods is complex land tenure systems. There is considerable potential to increase production and productivity through improved diversified farming systems approaches and addressing land use and tenure constraints. Subsistence farmers resort to multi root crop and traditional cropping systems to meet basic food needs. With improved technical support, many producers could graduate from subsistence to semi-commercial production activities. Between 30-40% of employment is in the agriculture sector.

dropped from 72 ½ years in 2012 to 67 years today. NCDs, caused by poor nutrition, changing diets, physical inactivity, and substance abuse, have become a serious financial burden on the poor. NCDs seriously drain Tonga’s fiscal resources and erode its human capacity. Agriculture can play a key role in improving diets and nutrition.

53. Tonga is part of the Small Island Developing States (SIDS) that are a distinct group of developing countries with specific social, economic, environmental, food, water and nutrition related opportunities and vulnerabilities.¹⁸ Tonga is still recovering from the devastation of the volcanic eruption which has affected and disproportionately deprived people to the right to food.¹⁹ The volcanic eruption has added pressure to the on-going pressure by climate change and the COVID-19 situation in the agriculture sector and the situation. This will enable mainly rural people in Tonga to overcome hardship and disasters, and to achieve sustainable livelihoods especially outer islands and remote rural areas of Tongatapu with an inclusive approach of targeting women, youth, disability and other vulnerable groups.
54. UNCT recommends that Tonga continue its cooperation with the UN system and development partners on matters related to rural development, agriculture sector and climate change. It also recommends that Tonga take steps, in line with a pluralistic extension service delivery modality (through NGOs, the private sector, and Government), towards the provision of more relevant, responsive, accessible, and accountable services to communities, especially for those living in remote locations where public extension finds it challenging and difficult to operate. Similarly, Tonga should take measures to provide support packages, subject to farmers meeting certain conditions (such as only providing micro-finance services to farmers who graduate from FFSs) that would enhance effectiveness and increase farmers’ ownership and pro-activeness in a sustainable manner.

I. Rights of the child

55. Positive steps have been taken to strengthen support and relevant legislative frameworks to protect children against violence, such as the Family Protection Act of 2013 and the Domestic Violence Response Policy. A Committee has also been formed to develop a National Child Protection Policy. However, concerns remain that amongst other things, there is currently no child protection legislation, nor relevant guidelines and standards for a comprehensive and functioning child protection institutional framework. There are still inadequate resources to enforce the laws designated to protect children from all forms of abuse; children are not sufficiently aware of existing laws; there are no child-friendly reporting mechanisms; and there is a shortage of specialized personnel to handle

¹⁸ There are in the areas of agriculture to achieve the desire for right to food for all which is has clear relationship to SDG 2 to end hunger, achieve food security and improve nutrition and promote sustainable agriculture. Some of the areas work that is on-going with this regard includes continued support to Tonga Rural Innovation Project with emphasis on food security, land reclamation and water harvesting; from market access to farm production; exploring options for mobilizing medium term supplementary resources with donor partners; supporting a diaspora response programme and greater allocations for Tonga under the forthcoming Pacific Rural Women Economic Empowerment project. This includes the continued engagement with remote rural communities and supporting improvement in their livelihoods through enhanced community planning and improved delivery of public and private goods and services.

¹⁹ Key agencies such as IFAD, FAO and development partners have strategically attended to short term recovery and is working on medium- and long-term solutions.

child victims both in emergency and non-emergency situations.²⁰

56. Several laws are still not aligned to the provisions of the CRC, such as the Criminal Offences Act which provides a very low minimum age for criminal responsibility which is set at 7 years.²¹ The minimum marriage age remains at 15 years for both male and female where the guardian's written consent is required for persons under 18 years. In 2019, the CRC Committee raised serious concerns relating to several laws that are not in line with the CRC's definition of a child, which includes the Births, Deaths and Marriages Registration Act.
57. UNCT recommends that Tonga; protect the rights of children in the justice system, in line with the Committee on the Rights of the Child's general comment No. 24 (2019) on children's rights in the child justice system, including by increasing the minimum age of criminal responsibility to at least 14 years of age; enact legislation governing children's rights in the administration of justice; ensure that children are not detained in prison cells except as a measure of last resort and for the shortest period of time, and that they are not held with adults as a principle; among others.²²
58. Despite recommendations from the Human Rights Council through the Universal Periodic Review process (UPR 2013 & 2018) to prohibit corporal punishment, the practice continues, and this was acknowledged in the 2018 CRC Initial State Party report.²³
59. UNCT recommends that Tonga takes measures to:
 - a. Widely disseminate the MICS results; and conduct secondary analysis to further inform policies and intervention for children;
 - b. Allocate adequate resources for the effective implementation of the Family Protection Act 2013, including by putting in place a range of alternative care modalities to support child victims of violence, and also provide sufficient psychosocial support, recovery and reintegration services;
 - c. Strengthen the child protection framework which includes the development of a child protection legislation with a costed implementation plan; development of a

²⁰ In October 2020, the Government launched the first Tonga Multiple Indicator Cluster Survey (MICS) 2019 collecting critical data for children relating to health, nutrition, child protection, education, water, sanitation and hygiene as well as domestic violence amongst other topics. It provides disaggregated data for identification of disparities to inform policies and other interventions aimed at social inclusion of children and the most vulnerable population.

²¹ Further regarding children in the justice system, in 2019, the CRC Committee noted that Tonga is developing a youth diversion scheme as an alternative to a formal juvenile justice system but expressed concern about the low age of criminal responsibility (7 years), the lack of a law governing the administration of juvenile justice, no time limit for pre-trial detention of children, the lack of legal representation in court, and the lack of awareness on the convention by magistrates and other officials, amongst other areas.

²² There are some serious concerns relating to the administration of juvenile justice as there is no law governing the administration of the same that promotes restorative justice and diversion programme for young offenders. There is no time limit for pretrial detention of children, and children appearing in court generally do not have legal representation. Judges and magistrates are unaware of the provisions of the Convention; and due to budgetary constraints, there is no separate juvenile detention facility and children are mixed with adults.

²³ The report further highlighted that whipping is the only form of corporal punishment that is available under the criminal justice system. While there is prohibition in the Prisons Act 2010, it is unclear whether the prohibition in the Prisons Act also extends to other institutions that accommodate children who come in contact with the law. Corporal punishment is explicitly prohibited in the 2013 Education Act, the measures taken by the Government to implement this provision is unclear. The CRC Committee expressed serious concerns, that while corporal punishment is prohibited in schools and penal institutions, it is still lawful in the home and in alternative and day-care settings, and that whipping indeed is still used as a judicial corporal punishment for a crime.

- formal social welfare system with capacitated workforce and supported by relevant inter-agency guidelines for the management and referral of child protection cases;
- d. Revise all legislation to ensure the definition of a child is in line with the definition in the CRC; including the Births, Deaths and Marriages Registration Act to ensure that the minimum age for marriage is set at 18 years;
 - e. Explicitly prohibit corporal punishment in law and in practice in all settings and repeal the right to administer judicial corporal punishment for a crime; and effectively enforce the prohibition against corporal punishment in schools and penal institutions and provide children with a complaints, feedback and response mechanism, especially in schools and faith based settings;
 - f. Bring its juvenile justice system fully into line with the CRC and other relevant standards, in particular by raising the minimum age of criminal responsibility to acceptable international standards for all cases, adopting legislation for the administration of juvenile justice and ensure that children under the age of 18 are accorded all proper legal safeguards.

J. Persons with disabilities

60. In 2015, the Government established a Social Protection and Disability Division under the Ministry of Internal Affairs with a view to developing social protection policies and schemes to support vulnerable populations, including persons with disabilities, and improve their quality of life by 2025. Moreover, Tonga has signed but has yet to ratify the UN Convention on the Rights of Persons with Disabilities.
61. Anecdotal evidence highlights that sexual violence against women with disabilities is particularly prevalent. It has been suggested that women with disabilities are more likely to be homeless and be pushed into sex work, especially women with ‘intellectual or mental health disabilities. Tonga Women’s Crisis Centre has developed a specific referral pathway for women and girls with disabilities to better meet the needs of individuals.
62. Provision of inclusive education has been a long-standing challenge. While there have been some improvements in access to education by persons with disabilities, challenges remain, especially for remote communities.
63. UNCT recommends that Tonga prioritize that work to eliminate violence against women and girls includes a focus on women with disabilities. UNCT also recommends that Tonga ratify the UN Convention on the Rights of Persons with Disabilities, and further strengthen the legal and policy framework related to enhancing access of persons with disabilities to health, education, employment, public places, transport and information.

K. Climate change and human rights

64. Tonga is the world’s third ‘most at risk’ country to the effects of climate change and is highly dependent on imported fuels to meet its overall energy requirements.²⁴ A Tonga Climate Change Fund was established for strategic use of Green Climate Funds and donor grants. Tonga’s Climate Change Policy: A Resilient Tonga by 2035 acknowledges that the country is extremely vulnerable to the adverse effects of climate change and disaster risks because of its geographical, geological and socioeconomic features. The policy recognized that climate change is the single biggest issue determining the future

²⁴ The government improved national energy security by approving a policy to supply 100% of electricity generation through renewable resources by 2020.

of Tonga over the coming decades and will require a whole of Tonga level of cooperation and coordination. The policy recognized that building resilience will be very costly, even without considering the funds required for loss and damage due to climate change. The policy is described as multifaceted, cross-sectoral, gender-inclusive and equitable, with a strong emphasis on community ownership, supported by strong governance. A revised Joint National Action Plan on Climate Change and Disaster Risk Management 2018-2028 (JNAP 2) was developed in 2018 to implement the Climate Change Policy.

65. In 2018, Tropical Cyclone Gita caused devastation to Tongatapu and ‘Eua islands, causing widespread flooding and destruction, including the levelling of trees, power lines, homes and a number of significant landmarks, most notably Parliament House. A post-Cyclone Gita situation analysis of Tongatapu in 2018 found that the impact was greater for persons with disabilities who already experienced limitations with regard to social inclusion, accessing education, livelihood opportunities and safe housing, water and sanitation facilities. Disasters in Tonga disproportionately affect vulnerable groups such as people of lower socio-economic classes, women, young people, and workers in the informal economy (especially in the agricultural sector).²⁵
66. UNCT recommends that Tonga enhance the implementation of its climate change policies while adopting a human rights-based approach, including by addressing specific needs of and barriers for, as well as fostering participation and inclusion of, marginalized and disadvantaged groups in disaster preparation and response, such as children, women, persons with disabilities, indigenous peoples, among others. It also recommends that Tonga adopt concrete measures to protect vulnerable groups to assist them in being more resilient to the impact of climate change and natural disasters.

²⁵ A) Women’s income in Tonga is dependent on natural resources and assets that are likely to be impacted by natural disasters. For example, mulberry and pandanus trees, which are farmed and used by women for agriculture and crafting, are severely affected by tropical cyclones. Women are not able to divest from such livelihoods, as women have less opportunities than men to access different careers due to “social norms, domestic responsibilities and/or limited education”. B) Discrepancies in aid provision exist in Tonga. Female-headed households are often overlooked in aid distribution by town and district officers, who will only consider a household ‘female-headed’ if the woman leading is widowed. Single, abandoned, divorced, or separated women are not considered. The overall representation of women in disaster preparedness and humanitarian decision-making is not known. Disaster preparedness committees, however, are reportedly largely comprised of men, therefore many women are excluded from decision-making processes during disasters. In the aftermath of Tropical Cyclone Gita in February 2018, the Women’s and Children’s Crisis Centre interviewed women in evacuation centers. Results suggest that women wanted to be more prepared and felt that they had not been involved directly in decision-making; 14 out of 17 respondents expressed that they were not involved in decision-making in the first 72 hours following Tropical Cyclone Gita and that they were simply following instructions on where to stay and what to do. C) The risk of gender-based violence towards women and girls increases in the event of a natural disaster. Following Tropical Cyclone Gita, women and girls in Tonga reported feeling unsafe because there was no electricity which restricted access to lighting and phones. D) Women’s lower levels of access (compared to men) to information systems/sources such as weather forecasts, flood warnings and water levels leaves them increasingly vulnerable to natural disasters. Generally, across the Pacific Island countries women tend to have limited access to information, in part due to gendered social norms. Positioned as ‘household heads’, men are more likely to have better access to information and control who accesses information in their household. They may also incorrectly interpret relevant information. E) The Safety and Protection Cluster chaired by the Ministry of Internal Affairs oversees gender and protection at a national level. The National Women’s Empowerment and Gender Equality Policy notes that the specific vulnerabilities of women are recognized in a number of programmes relating to natural disasters and climate change. For example, the work by the Safety and Protection Cluster and the Ministry of Meteorology, Energy, Information, Disaster Management, Environment, Climate Change and Communications (MEIDECC). The Tonga Climate Change Policy states that gender issues are to be considered in all planning and implementation processes in recognition of the unique issues women and men face.

Annex

Organization	Focal Point	Address
United Nations Office of the High Commissioner for Human Rights [UNOHCHR]	Heike Alefsen , Regional Representative	Level 5, Kadavu House, 414 Victoria Parade, Suva
United Nations Development Fund [UNDP]	Levan Bouadze , UNDP Resident Representative	Level 2, Kadavu House, 414 Victoria Parade, Suva
United Nations Children's Fund [UNICEF]	Jonathan Veitch , UNICEF Representative	Level 3, FDB Building, 360 Victoria Parade, Suva
United Nations Entity for Gender Equality and the Empowerment of Women [UN Women]	Melissa Stutsel , Representative a.i.	Level 3, Kadavu House, 414 Victoria Parade, Suva
International Labour Organization [ILO]	Matin Karimli , ILO Director	Level 8, FNPF Place (Dolphin), Victoria Parade, Suva
International Organization for Migration	Solomon Kantha , Chief of Mission IOM UN Migration Agency in Fiji	Level 5, FNPF Place (Dolphin), Victoria Parade, Suva
United Nations Population Fund [UNFPA]	Iori Kato , Director and Representative United Nations Population Fund (UNFPA) Pacific	Level 6, Kadavu House, 414 Victoria Parade, Suva
International Fund for Agriculture Development [IFAD]	Sakiusa Tubuna , IFAD Sub-regional Coordinator (Pacific)	Level 1, Kadavu House, 414 Victoria Parade, Suva
World Health Organization [WHO]	Dr Mark Jacobs , WHO Representative/Director, Pacific Technical Support	Level 4 Provident Plaza One Downtown Boulevard 33 Ellery Street, Suva
United Nations Office on Drugs and Crime [UNODC]	Marie Pegie Cauchois , UNODC Regional Anti-Corruption Adviser	Level 7, Kadavu House, 414 Victoria Parade, Suva