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HUMAN RIGHTS, IN ACCORDANCE WITH PARAGRAPH 15(B) OF THE ANNEX TO
HUMAN RIGHTS COUNCIL RESOLUTION 5/1

Tonga

This report is a compilation of the information contained in the reports of treaty bodies, special procedures, including observations and comments by the State concerned, and other relevant official United Nations documents. It does not contain any opinions, views or suggestions on the part of the Office of the High Commissioner for Human Rights (OHCHR), other than those contained in public reports issued by OHCHR. It follows the structure of the general guidelines adopted by the Human Rights Council. Information included herein has been systematically referenced in endnotes. The periodicity of the review for the first cycle being four years, most documents are dated after 1 January 2004. In the absence of recent information, the latest available reports and documents have been taken into consideration, unless they are outdated. Since this report only compiles information contained in official United Nations documents, lack of information or focus on specific issues may be due to non-ratification of a treaty and/or to a low level of interaction or cooperation with international human rights mechanisms.

I. BACKGROUND AND FRAMEWORK

A. Scope of international obligations ¹

<i>Core universal human rights treaties²</i>	<i>Date of ratification, accession or succession</i>	<i>Declarations /reservations</i>	<i>Recognition of specific competences of Treaty bodies</i>
ICERD	16 February 1972	Yes (Art. 4; 5 (d) & (v); 6, 15 and 20)	Individual complaints (art. 14): No
CRC	6 November 1995	No	
<i>Core treaties to which Tonga is not a party: ICESCR, ICCPR, ICCPR-OP1, ICCPR-OP2, CEDAW, OP-CEDAW, CAT, OP-CAT, OP-CRC-AC, OP-CRC-SC, ICRMW, CPD, CPD-OP and CED.</i>			
<i>Other relevant main instruments</i>			<i>Ratification, accession or succession</i>
Convention on the Prevention and Punishment of the Crime of Genocide			Yes
Rome Statute of the International Criminal Court			No
Palermo Protocol ³			No
Refugees and stateless Persons ⁴			No
Geneva Conventions of 12 August 1949 and Additional Protocols thereto ⁵			Yes, except Protocol III
ILO fundamental conventions ⁶			No
UNESCO Convention against Discrimination in Education			No

1. In 2000, CERD noted that Tonga has not made the declaration provided for in article 14 of the Convention recognizing the competence of the Committee to receive individual communications and requested it to consider making such a declaration. ⁷

B. Constitutional and legislative framework

2. In 2006, the Special Representative of the Secretary-General on human rights defenders noted that it had been reported that Tonga has a relatively restrictive legal framework for the protection and promotion of human rights. ⁸

3. In 2000, CERD noted that the Convention has not been incorporated into domestic law and cannot be invoked before the national courts. It noted, however, that Tonga had asserted that the Convention is implicitly applied. ⁹

Institutional and human rights infrastructure

4. In 2006, the Special Representative of the Secretary-General on human rights defenders noted that Tonga has no national human rights institution. ¹⁰

II. PROMOTION AND PROTECTION OF HUMAN RIGHTS ON THE GROUND

A. Cooperation with human rights mechanisms

1. Cooperation with Treaty bodies

<i>Treaty Body¹¹</i>	<i>Latest report submitted and considered</i>	<i>Latest concluding observations</i>	<i>Follow-up response</i>	<i>Reporting status</i>
CERD	2000	03/2000	-	Fifteenth to eighteen report overdue since 2001, 2003, 2005 and 2007 respectively
CRC				Initial, second and third reports overdue since 1997, 2002 and 2007 respectively

2. Cooperation with Special procedures

<i>Standing invitation issued</i>	No
<i>Latest visits or mission reports</i>	None
<i>Visits agreed upon in principle</i>	None
<i>Visits requested and not yet agreed upon</i>	None
<i>Facilitation/cooperation during missions</i>	N/A
<i>Follow-up to visits</i>	None
<i>Responses to letters of allegations and urgent appeals</i>	Between 01.01.2004 and 31.12.2007, a total of 4 communications were sent to the Government of Tonga. Apart from communications sent for particular groups 1 male was covered by these communications. Between 01.01.2004 and 31.12.2007, the Government of Tonga replied to none of the communications.
<i>Responses to questionnaires on thematic issues¹²</i>	Tonga responded to none of the 12 questionnaires sent by special procedures mandate holders ¹³ between 1 January 2004 and 31 December 2007 within the deadlines.

B. Implementation of international human rights obligations

1. Equality and non discrimination

5. In 2000, CERD noted that Tonga repeatedly asserted that there is no racial discrimination as defined in article 1 of the Convention. The Committee underlined, however, that the obligation of States parties to enact explicit legislation in accordance with article 4 of the Convention should not be seen merely as a means to ensure protection against existing violations of the Convention, but as a preventive measure. The Committee was of the opinion that the absence of complaints and legal action by victims of racial discrimination could possibly be an indication of a lack of awareness of available legal remedies, or a result of the absence of relevant specific legislation. CERD recommended that Tonga take steps to ensure that national legislation is in full conformity with article 4 of the Convention.¹⁴

6. CERD recommended that Tonga include in its next periodic report information on factors affecting and difficulties experienced in ensuring for women the equal enjoyment, free from racial discrimination, of rights under the Convention, in order for CERD to be able to assess whether any racial discrimination has an impact on women different from that which it has on men.¹⁵

7. A 2006 UNDP report noted that women and men have equal access to education and health care, and are fairly equal in employment, but not to land holding, electoral politics, and government ministries.¹⁶ Furthermore, the WHO Regional Office for Western Pacific informs that despite equal opportunities in education, the number of women in leading positions remains limited. An important step was taken in 2005 when the first female Member of Parliament was elected. However, women continue to be discriminated against in legislation, including land ownership rights, child support rights and inheritance laws.¹⁷

2. Right to life, liberty and security of the person

8. In 2006, the Special Representative on human rights defenders, the Special Rapporteur on the question of torture and the Working Group on arbitrary detention sent a communication concerning the violent events surrounding a pro-democracy march which took place in November 2006 in Nuku'alofa. It was reported that the peaceful pro-democracy march became violent when other individuals engaged in extensive looting, arson, and property damage arrived. The city was cordoned off by the Tonga Defense Service personnel and police officers from the Ministry of Police, which have been granted wide ranging powers under the Emergency Powers (Maintenance of Public Order) Regulations 2006, including the ability to arrest and detain any person for a period not exceeding 48 hours. It was reported that security forces arrested 120 to 140 persons, targeting in particular pro-democracy leaders who had organized and participated in the march or had given speeches. Eight persons were reported to have been killed. Prisoners reported that the majority of their injuries were sustained during arrest and in transit to the police station, primarily by the Tonga Defense Services. The prisoners were not offered access to lawyers, and many families were unaware that their relatives had been detained until their release several days later. Interrogations were reported to be frequently violent, some detainees were allegedly forced to sign confessions and subjected to threats. Regarding conditions of detention, it was alleged that some prisoners were handcuffed continuously for up to four days, that in a cell with a 16 person capacity, 64 prisoners were detained, including 30 children, that prisoners were forced to sleep on the floor and that toilet visits were restricted. Around 355 suspects have allegedly been charged by the Ministry of Police with various offences, including arson and theft¹⁸. The Special Representative on human rights defenders regretted that no response had been received from the Government of Tonga given the serious nature of this case.¹⁹

3. Right to privacy, marriage and family life

9. In 2000, CERD expressed particular concern at section 10 (2) (c) of the Immigration Act of the Laws of Tonga, according to which the right to marriage between a Tongan and a non-Tongan is conditioned by the written consent of the Principal Immigration Officer. CERD considered that the application of this legislation might amount to a breach of article 5 (d) of the Convention.²⁰

4. Freedom of expression, association and peaceful assembly, and right to participate in public and political life

10. In 2006, the Special Representative on human rights defenders was concerned about reports that the right to freedom of expression has been violated on several occasions by the imprisoning of reporters and critics of the policies of the Government²¹.

11. In a communication sent on 18 February 2004, the Special Rapporteur on freedom of expression wrote to the Government about a reported amendment to the Constitution and of

two draft laws, the Newspapers Act (2003) and the Media Operators Act (2003). It was reported that, prior to the adoption of the two draft Bills on 5 December 2003²², there had been opposition in particular with respect to extensive powers granted to the Government over the functioning of the media, specifically the power to deliver publication and import licenses to newspapers. With respect to the constitutional amendment, also adopted on 5 December 2003, which allegedly allowed the Government to ban a news media if it violated “cultural traditions or the right to private life”, it was reported that it retroactively validated the February 2003 ban of the newspaper *Taimi o’Tonga* for an article on government corruption, which the Supreme Court had ruled unconstitutional in May 2003²³. Reports indicated that the adoption of these texts had led to the confiscation of newspapers and to the refusal of licenses. It was further reported that, between the beginning of 2004 and 18 February 2004 when the communication was sent, no newspaper had appeared on newsstands, reportedly because of warnings of severe penalties for unlicensed publishers, booksellers and importers, along with alleged police raids on shops, in particular to confiscate copies of the *Taimi o’Tonga* newspaper²⁴.

12. In 2006, the Special Representative on human rights defenders noted that Tonga has very few organisations that could be termed human rights organisations, but that in the past there have been calls from some organisations for greater reform of the legal system to protect basic rights.²⁵ She noted that, in the Pacific’s only Kingdom, a few active organisations promote political and civil rights and democracy, with a specific focus on good governance, transparency and accountability, and carry out advocacy on economic rights such as housing and access to water.²⁶

13. A 2006 UNDP report noted that there is a pro-democracy movement in Tonga, which emphasizes reforms including better representation in the Parliament for the majority commoners, and better accountability in matters of state. It further informed that, in 2005, the Government spent several weeks negotiating with striking civil service workers before reaching a settlement.²⁷

5. Right to social security and to an adequate standard of living

14. A 2007 UNDP report indicated that in 2004, 100% of the population used an improved water source.²⁸ The UNFPA Office for the Pacific website also noted that the Government provides free health services through 4 hospitals, various health centres and maternal health clinics, which are spread throughout the country. The access to health services, improved drinking water and adequate sanitation is good, for the majority of the population. There is a private medical sector in Nukualofa. It also informed that the vaccination rates for various childhood illnesses are between 90 and 100% and Tonga has one of the lowest infant mortality rates in the Pacific.²⁹

15. The WHO Regional Office for Western Pacific informs that Tonga has gone through an epidemiological transition since the 1950s, with increasing life expectancy and falling fertility rates, childhood mortality rates and maternal mortality. Life expectancy at birth increased from 40 years in 1939 to 70 years for males and 72 years for females in 2003.³⁰ A 2006 and a 2007 UNDP reports indicated that the under-five mortality rate decreased from 25 per 1,000 live births in 2004 to 24 per 1,000 live births in 2005.³¹ The UNICEF Pacific also states that injuries and accidents are major causes of childhood morbidity.³²

16. The WHO Regional Office for Western Pacific also informs that HIV prevalence remains very low. Fourteen people have been diagnosed with HIV infection over the last 16

years and, as of January 2006, there was only one person known to be living with HIV infection.³³

6. Right to education and to participate in the cultural life of the community

17. A 2006 UNDP report noted that primary education between ages 6 and 14 is compulsory and free in state schools. Mission schools provide about 83% of the primary and 90% of the secondary level education. Higher education includes teacher training, nursing and medical training, a small private university, a women's business college, and a number of private agricultural schools. Most higher education is pursued overseas.³⁴ The WHO Regional Office for Western Pacific also informs that while most primary schools teach in Tongan, secondary education is mainly conducted in English. The education rate is similar for both genders, with some advantages for girls at the secondary level.³⁵ A 2006 UNDP report also noted that Tongans are well-educated, with a 98% literacy rate, and higher education up to and including medical and graduate degrees.³⁶ The WHO Regional Office for Western Pacific further informs that the literacy rate is very high (98.8%) and most children complete compulsory primary school classes. Education absorbed 14% of the national budget in 2004.³⁷

III. ACHIEVEMENTS, BEST PRACTICES, CHALLENGES AND CONSTRAINTS

18. A 2006 UNDP report noted that the Government has contributed Peacekeepers to the United Nations.³⁸

IV. KEY NATIONAL PRIORITIES, INITIATIVES AND COMMITMENTS

n/a

V. CAPACITY BUILDING AND TECHNICAL ASSISTANCE

n/a

Notes

¹ Unless indicated otherwise, the status of ratifications of instruments listed below may be found in Multilateral Treaties Deposited with the Secretary-General: Status as at 31 December 2006, ST/LEG/SER.E.25.; complemented by the official website of the United Nations Treaty Collection database, Office of Legal Affairs, <http://untreaty.un.org/>.

² The following abbreviations have been used for this document:

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

³ Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime.

⁴ 1951 Convention relating to the Status of Refugees and its 1967 Protocol, 1954 Convention relating to the status of Stateless Persons and 1961 Convention on the Reduction of Statelessness.

⁵ Convention (I) for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field; Convention (II) for the Amelioration of the Condition of Wounded, Sick and Shipwrecked Members of Armed Forces at Sea; Convention (III) relative to the Treatment of Prisoners of War; Convention (IV) relative to the Protection of Civilian Persons in Time of War; Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of International Armed Conflicts (Protocol I); Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of Non-International Armed Conflicts (Protocol II); Protocol additional to the Geneva Conventions of 12 August 1949, and relating to the Adoption of an Additional Distinctive Emblem (Protocol III). Source: Switzerland, Federal department of foreign affairs, <http://www.eda.admin.ch/eda/fr/home/topics/intla/intrea/chdep/warvic.html>.

⁶ International Labour Organization Convention No. 29 concerning Forced or Compulsory Labour; Convention No.105 concerning the Abolition of Forced Labour, Convention No. 87 concerning Freedom of Association and Protection of the Right to Organize; Convention No. 98 concerning the Application of the Principles of the Right to Organize and to Bargain Collectively; Convention No. 100 concerning Equal Remuneration for Men and Women Workers for Work of Equal Value; Convention No. 111 concerning Discrimination in Respect of Employment and Occupation; Convention No. 138 concerning Minimum Age for Admission to Employment; Convention No. 182 concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour.

⁷ CERD Committee, concluding observations, CERD/C/304/Add.96, adopted on March 2000, para., 12.

⁸ SRSR on human rights defenders, E/CN.4/2006/95/Add.5, para. 1248.

⁹ CERD Committee, concluding observations, CERD/C/304/Add.96, adopted on March 2000, para., 6.

¹⁰ SRSR on human rights defenders, E/CN.4/2006/95/Add.5, para. 1252.

¹¹ The following abbreviations have been used for this document:

CERD	Committee on the Elimination of Racial Discrimination
CRC	Committee on the Rights of the Child

¹² The questionnaires included in this section are those which have been reflected in a report by a Special Procedure mandate holder.

¹³ See (i) report of the Special Rapporteur on the right to education (A/HRC/4/29), questionnaire on the right to education of persons with disabilities sent in 2006; (ii) report of the Special Rapporteur on the human rights of migrants (A/HRC/4/24), questionnaire on the impact of certain laws and administrative measures on migrants sent in 2006; (iii) report of the Special Rapporteur on trafficking in persons, especially women and children (A/HRC/4/23), questionnaire on issues related to forced marriages and trafficking in persons sent in 2006; (iv) report of the Special Representative of the Secretary-General on human rights defenders (E/CN.4/2006/95 and Add.5), questionnaire on the implementation of the Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms sent in June 2005; (v) report of the Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous people (A/HRC/6/15), questionnaire on the human rights of indigenous people sent in August 2007; (vi) report of the Special Rapporteur on trafficking in persons, especially in women and children (E/CN.4/2006/62) and the Special Rapporteur on the sale of children, child prostitution and child pornography (E/CN.4/2006/67), joint questionnaire on the relationship between trafficking and the sent in July 2005; (vii) report of the Special Rapporteur on the right to education (E/CN.4/2006/45), questionnaire on the right to education for girls sent in 2005; (viii) report of the Working Group on mercenaries (A/61/341), questionnaire concerning its mandate and activities sent in November 2005; (ix) report of the Special Rapporteur on the sale of children, child prostitution and child pornography (A/HRC/4/31), questionnaire on the sale of children's organs sent on July 2006; (x) report of the Special Rapporteur on the sale of children, child prostitution and child pornography (E/CN.4/2005/78), questionnaire on child pornography on the Internet sent in July 2004; (xi) report of the Special Rapporteur on the sale of children, child prostitution and child pornography (E/CN.4/2004/9), questionnaire on the prevention of child sexual exploitation sent in July 2003; (xii) report of the Special Representative of the Secretary-General on the issue of human rights and transnational corporations and other business enterprises (A/HRC/4/35/Add.3), questionnaire on human rights policies and management practices.

¹⁴ CERD Committee, concluding observations, CERD/C/304/Add.96, adopted on March 2000, para., 5.

¹⁵ CERD Committee, concluding observations, CERD/C/304/Add.96, adopted on March 2000, para., 7.

¹⁶ UNDP, Country Background Note, UNDP HRBAP Cluster Meeting, Suva, 2006, p. 3, available at http://www.undp.org.fj/_resources/main/files/country_programmes/Tonga/CBN%20Tonga.doc (accessed on 18 March 2008).

¹⁷ See the WHO Regional Office for the Western Pacific website, available at <http://www.wpro.who.int/countries/ton/> (accessed on 12 March 2008).

¹⁸ Special Rapporteur on torture, A/HRC/4/33/Add.1, para. 299.

¹⁹ SRSR on human rights defenders, A/HRC/7/28/Add.1, para. 1851.

²⁰ CERD Committee, concluding observations, CERD/C/304/Add.96, adopted on March 2000, para., 8.

²¹ SRSR on human rights defenders, E/CN.4/2006/95/Add.5, para.1262.

²² Special Rapporteur on freedom of expression and opinion, E/CN.4/2005/64/Add.1, para. 906.

²³ Special Rapporteur on freedom of expression and opinion, E/CN.4/2005/64/Add.1, para. 906.

²⁴ Special Rapporteur on freedom of expression and opinion, E/CN.4/2005/64/Add.1, para. 904.

²⁵ SRSR on human rights defenders, E/CN.4/2006/95/Add.5, para. 1242.

²⁶ SRSR on human rights defenders, E/CN.4/2006/95/Add.5, para. 1244.

²⁷ UNDP, Country Background Note, UNDP HRBAP Cluster Meeting, Suva, 2006, pages 3 and 4, available at http://www.undp.org.fj/_resources/main/files/country_programmes/Tonga/CBN%20Tonga.doc (accessed on 18 March 2008).

²⁸ UNDP, Human Development Report 2007, New York, 2007, p. 252.

²⁹ See the UNFPA Office for the Pacific website, available at: <http://pacific.unfpa.org/Countries/to.htm> (accessed on 12 March 2008).

³⁰ See the WHO Regional Office for the Western Pacific website, available at <http://www.wpro.who.int/countries/ton/> (accessed on 12 March 2008).

³¹ UNDP, Human Development Report 2006, New York, 2006, p. 316, and UNDP, Human Development Report 2007, New York, 2007, p. 262.

³² See the UNICEF Pacific website, available at <http://www.unicef.org/infobycountry/Tonga.html> (accessed on 13 March 2008).

³³ See the WHO Regional Office for the Western Pacific website, available at <http://www.wpro.who.int/countries/ton/> (accessed on 12 March 2008).

³⁴ UNDP, Country Background Note, UNDP HRBAP Cluster Meeting, Suva, 2006, p. 2, available at http://www.undp.org.fj/_resources/main/files/country_programmes/Tonga/CBN%20Tonga.doc (accessed on 18 March 2008).

³⁵ See the WHO Regional Office for the Western Pacific website, available at <http://www.wpro.who.int/countries/ton/> (accessed on 12 March 2008).

³⁶ UNDP, Country Background Note, UNDP HRBAP Cluster Meeting, Suva, 2006, p. 2, available at http://www.undp.org.fj/_resources/main/files/country_programmes/Tonga/CBN%20Tonga.doc (accessed on 18 March 2008).

³⁷ See the WHO Regional Office for the Western Pacific website, available at <http://www.wpro.who.int/countries/ton/> (accessed on 12 March 2008).

³⁸ UNDP, Country Background Note, UNDP HRBAP Cluster Meeting, Suva, 2006, p. 3, available at http://www.undp.org.fj/_resources/main/files/country_programmes/Tonga/CBN%20Tonga.doc (accessed on 18 March 2008).