



NGO: EUROPEAN CENTRE FOR LAW AND JUSTICE (ECLJ)

**UNIVERSAL PERIODIC REVIEW
43RD SESSION**

**STATUS OF HUMAN RIGHTS IN THE KINGDOM OF TONGA
FOR THE 43RD SESSION OF THE
UNIVERSAL PERIODIC REVIEW**

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Introduction

1. The European Centre for Law and Justice (ECLJ) is an international, non-governmental organization dedicated to promoting human rights around the world. The ECLJ holds Special Consultative status before the United Nations Economic and Social Council. The purpose of this report is to raise concerns regarding human rights violations, particularly human trafficking, forced child marriage, and corporal punishment of children in the Kingdom of Tonga (Tonga) for the 43rd session of the Universal Periodic Review (UPR).

Background

2. Tonga, a country made up of 171 islands located in the South Pacific Ocean, has an estimated population of 106,700 people.¹ Tonga is predominately Christian, with 61% of the population identifying as Protestant, 18% as Mormon, 14% as Roman Catholic, and 3% as other or none.²

3. Tonga's previous review was held on January 15, 2018.³ As a result of the review, Tonga received 110 recommendations, 52 of which it supported.⁴ Several human rights issues were raised, including human trafficking, the prevalence of child marriage, and the improper use of corporal punishment of children.⁵ A recommendation made by the Philippines, and supported by Tonga, to address human trafficking and child exploitation has been partially addressed but still needs to be improved upon.⁶ Another recommendation, made by Argentina, Sierra Leone, Brazil, and Italy, and supported by Tonga, was that the Tongan government "take additional steps towards the abolition of child marriage, including by raising to 18 the minimum age of marriage."⁷ A third recommendation, made by Italy and Uruguay, and supported by Tonga, was for the government to outlaw legislation that permits violent child corporal punishment for crimes.⁸ Finally, fifteen countries recommended, and Tonga supported, that the government accede to core international human rights treaties, including the Convention on the Elimination of all Forms of Discrimination against Women (CEDAW), the International Covenant on Civil and Political Rights (ICCPR), and the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT).⁹

Legal Framework

Human Trafficking

4. The Tongan Constitution prohibits the trafficking and slavery of all people.¹⁰ Further, Tonga's Counter Terrorism and Transnational Organised Crime Act states in Section 68 that a

person involved in human trafficking is subject to up to 15 years imprisonment.¹¹ Additionally, Section 69 states that “any person who intentionally engages in trafficking in a person who is a child or is involved in the arranging of trafficking in a person who is a child . . . commits an offence. . . . [and] shall be liable upon conviction to imprisonment not exceeding 20 years.”¹²

5. Tonga is also a party to several international human rights treaties, including the United Nations (UN) Department of Economic and Social Affairs Sustainable Development Convention (Sustainable Development Goals), the UN Convention on the Rights of the Child (CRC), and the International Labor Organization Convention No. 182 (C182).¹³

6. C182 prohibits the worst forms of child labor, including “all forms of slavery or practices similar to slavery, such as the sale and trafficking of children, debt bondage and serfdom and forced or compulsory labour . . . [and] the use, procuring or offering of a child for prostitution, for the production of pornography or for pornographic performances”¹⁴

Child Marriage

7. Under Article 6 of Tonga’s Births, Deaths and Marriages Registration Act (BDMRA), child marriage is outlawed for a child below fifteen.¹⁵ The BDMRA, however, permits a child between fifteen and eighteen to be married with the guardian’s consent.¹⁶

8. Article 9 of the CRC, to which Tonga is a party, defines a child as “every human being below the age of eighteen years.”¹⁷ In accordance with Target 5.3 of the UN’s Sustainable Development Goals, “Tonga has committed to eliminate child, early and forced marriage by 2030.”¹⁸

Child Corporal Punishment

9. The Criminal Offenses Act (COA) Section 130 states that “[i]n the case of any male person convicted of an offence[,] . . . the Court, if the age of such offender does not exceed 16 years . . . [may] order him to be whipped.”¹⁹ Section 31 states that “[i]t shall be unlawful to sentence any female to be whipped . . . [but a] male offender may be sentenced to be whipped once or twice . . . [and w]here the person sentenced to be whipped is a male under 16 years of age the whipping shall be inflicted on the breech with a light rod or cane composed of tamarind or other twigs.”²⁰

10. The Tonga Magistrates’ Court Act provides that a male child between seven and sixteen years of age that is convicted for a criminal offense can be whipped by the police.²¹

11. The Tonga Evidence Act allows the police to whip male children who purposefully give false testimony in regards to a trial.²²

12. The Tonga Manufacture of Intoxicating Liquor Act allows the police to whip any male under age eighteen convicted for an offense regarding unlicensed intoxicating liquor.²³

13. The Tonga Order in Public Places Act allows the police to whip any male under the age of sixteen years convicted of an offence of smoking tobacco, drinking kava, found at any time in any

public billiard saloon, or if under the age of fourteen years, found after 8:30pm in any place of public amusement or in any public place whatsoever unaccompanied by his parent or guardian.²⁴

Trafficking and Exploitation

14. While trafficking and exploitation have been a problem in Tonga, the government is making efforts to end these human rights violations.²⁵

15. During the last UPR session, Lord Fusitu'a, as Tonga's representative to the Regional Parliamentarians Conference on Combating Human Trafficking, stated that Tonga "need[s] to deal with in[t]ra-country trafficking as well as trans-national trafficking."²⁶

16. On or before October 31, 2020, in response to the Global Compact for Safe, Orderly and Regular Migration Survey, the Prime Minister's office stated that "[t]here are no specific anti-TIP [trafficking in persons] trainings provided by the Government of Tonga for police, and other law enforcement officials. However, there is a plan to lodge a request to IOM to provide training on trafficking and smuggling of human beings for the Customs and Immigration Department officials."²⁷ However, at the time of the submission of this report, we have not been able to confirm if IOM has provided any such training.

17. On August 4, 2020, Tonga ratified C 182, which calls for the prohibition and elimination of the worst forms of child labour, which includes slavery, forced labour and trafficking.

18. On July 30, 2022, Tonga became part of an organizational effort between USAID and The Asia foundation to end trafficking in the Pacific region.²⁸ The goal of this project is to "reduce trafficking incidence and vulnerability by enhancing mechanisms and strategies to prevent trafficking, improve protection services for victims, and increase access to legal services and remedies."²⁹

19. Tonga's commitment to continue to fight trafficking is commendable, as we have found only one example of an actual prosecution of trafficking during this review period. In 2019, a jury found a Tongan couple guilty of owning a trafficked Fijian woman and forcing her into servitude between 2008 and 2016.³⁰

20. Unfortunately, despite only one case of trafficking being reported, trafficking of Tongan citizens and other people being brought into Tonga is still a problem. The Global Organized Crime Index report on Tonga states:

Tonga plays a role as a destination and source country for the trafficking of human beings. While Tongan men tend to be trafficked to countries like Australia and New Zealand for the purposes of forced labour, Tongan women and children are susceptible to being victimized and exploited in domestic servitude and sexual exploitation, both locally and abroad. With regard to the trafficking of foreign nationals in Tonga, East Asian women, primarily Chinese nationals, have been trafficked to Tonga for the purpose of sexual exploitation³¹

Child Marriage

21. Despite child marriage being outlawed for children under the age of fifteen, it is still prevalent in Tongan society.³² Approximately fifty child marriages occur every year in Tonga.³³ Currently, one out of ten young women, between twenty and twenty-four years old, was married before she reached eighteen years of age.

22. In 2019, Every Child Protected Against Trafficking International (ECPAT) did a study on perceptions of frontline welfare workers on the sexual exploitation of children in the Pacific. One of the participants, a welfare worker from Tonga, estimated that “child marriage due to pregnancy is high in Tonga- 50 to 60 marriages a year.”

23. The Women and Children Crisis Centre in Tonga reports that it has documented cases where

the young girl has been forced to marry the perpetrator who raped her . . . to prevent shame, embarrassment, talk in the village . . . [t]he perpetrator will come with the family, make the traditional apology and then it's accepted by the young girl's family and then the decision, which is made largely by the family, is to get them married.

24. During the last reporting period, the Talitha Project, an NGO dedicated to human rights,³⁴ ran a campaign in Tonga called *Let Girls Be Girls*. The purpose of the campaign was to end child marriage in Tonga, especially because many of these marriages occur when young girls are raped, become pregnant, or are perceived to be with boys intimately.

25. During that campaign, the Tongan government was vocal in its protest against child marriage.³⁵ The Ministry of Justice supported the campaign and mentioned raising the minimum age of marriage to eighteen,³⁶ and Deputy Speaker of the House, Lord Tu'i'āfitu, called the current laws “embarrassing.”³⁷ In responses to the campaign, the Tongan Women's Affairs Department stated that it was considering acceding to CEDAW.³⁸

26. Unfortunately, despite claiming to want change, Tonga has not made progress toward ending child marriage during this reporting period. The BDMRA is still in effect, and Tonga has not acceded to CEDAW.

Child Corporal Punishment

27. Abusive corporal punishment is “a traditional, or handed down, part of Tongan culture, which many youngsters [accept] as part of their lives – even though in many cases it cause[s] them misery.” Currently, 87% of children have experienced some form of violence, with one out of four experiencing severe physical punishment.

28. In an effort to address cultural or family violence in Tonga, a Tongan-Indigenous faith-based violence prevention program, Kainga Tu'umalie (Prosperous Families), shows promise.³⁹ By implementing and highlighting Christian values such as love, compassion, gentleness, and collective healing, the program focuses on creating a place of safety and refuge for participants.⁴⁰ “The positive impact on participating kainga [families] in the programme suggests the significance of a faith-based cultural approach for addressing family violence among the Tongan kainga.”⁴¹

29. Unfortunately, the culture of child corporal punishment extends into the criminal justice system as well. Sadly, there have been numerous instances of police brutality and violence in the form of extreme corporal punishment of both boys and girls of all ages. The police are beating children as young as twelve “with belts, iron bars, pieces of wood and chairs to extract confessions and as a form of arbitrary punishment.”

30. By allowing unrestrained beatings as punishment of children, the Tongan government is failing to uphold the right to be free from violent abuse afforded to children under the CRC.⁴²

31. Tonga is one of thirty-nine countries still corporally punishing children. While its laws may not be violating any international commitments, the actual implementation by the police, that goes well beyond what is allowed by law, is.

Recommendations

32. The government of Tonga must continue to protect children by closely monitoring instances of child trafficking and slavery and heavily punishing violators, as well as provide anti-TIP training to police and other law enforcement officials.

33. Additionally, the government should take steps to remove the child marriage section of the BDMRA and prohibit all child marriages, even those with parental or guardian consent, and especially those marriages where young children are being forced to marry their rapists. Tonga must raise the legal age of marriage to eighteen without exception, for both males and females.

34. Furthermore, the practice of extra-legal violent child corporal punishment in the criminal justice system should be eliminated and violators should be punished.

35. Finally, Tonga should take advantage of the faith-based violence prevention program as a template on how to effectively combat violence that is rooted in the Tongan culture and encourage more faith-based community involvement.

¹ *Tonga*, THE WORLD BANK (2022), <https://data.worldbank.org/country/tonga>.

² *Tonga Religions*, INDEX MUNDI (Sept. 18, 2021), <https://www.indexmundi.com/tonga/religions.html>.

³ *Tonga Infographic 29th*, UNHRC (Jan. 15, 2018),

https://www.ohchr.org/sites/default/files/libdocs/HRBodies/UPR/Documents/Session29/TO/TONGA_Infographic_29th.pdf.

⁴ *Id.*

⁵ *Matrix of Recommendations – Tonga*, UNHRC, <https://www.ohchr.org/en/hr-bodies/upr/t-oindex>.

⁶ *Id.* at A/HRC/38/5 - Para. 93.

⁷ *Id.*

⁸ *Id.*

⁹ *Id.* at A/HRC/38/5 - Para. 93. Add.1 - Para. 7.

¹⁰ CONSTITUTION OF TONGA, pt. 1, cl. 2, <https://www.parliament.gov.to/parliamentary-business/documents/constitution-of-tonga/file/487-act-of-constitution-of-tonga-2020-revised-edition>.

¹¹ COUNTER TERRORISM AND TRANSNATIONAL ORGANIZED CRIME ACT, chapt. 4.03, § 69 (Tonga), https://ago.gov.to/cms/images/LEGISLATION/PRINCIPAL/2013/2013-0017/CounterTerrorismandTransnationalOrganisedCrimeAct_3.pdf.

¹² *Id.*

¹³ *Convention on the Rights of the Child*, UNITED NATIONS TREATY COLLECTION, https://treaties.un.org/pages/ViewDetails.aspx?src=IND&mtdsg_no=IV-11&chapter=4&clang=_en (last updated Aug. 19, 2022, 9:15 AM); *Ratifications of C182 - Worst Forms of Child Labour Convention, 1999*, INT'L LAB. ORG., https://www.ilo.org/dyn/normlex/en/f?p=1000:11300:0::NO:11300:P11300_INSTRUMENT_ID:312327 (last visited Aug. 19, 2022, 11:23 AM).

¹⁴ *C182 - Worst Forms of Child Labour Convention, 1999*, INT'L LAB. ORG., https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100_ILO_CODE:C182 (last visited Aug. 19, 2022, 11:25 AM).

¹⁵ BIRTHS, DEATHS AND MARRIAGES REGISTRATION ACT [BDMRA], chapt. 17.02, § 6 (Tonga), https://ago.gov.to/cms/images/LEGISLATION/PRINCIPAL/1926/1926-0016/BirthsDeathsandMarriagesRegistrationAct_2.pdf.

¹⁶ *Id.*

¹⁷ *Convention on the Rights of the Child*, 20 Nov. 1989, G.A. Res. 44/25, art. 9, <https://www.ohchr.org/en/instruments-mechanisms/instruments/convention-rights-child>.

¹⁸ *Tonga*, GIRLS NOT BRIDES (2022), <https://www.girlsnotbrides.org/learning-resources/child-marriage-atlas/regions-and-countries/tonga/>.

¹⁹ CRIM. OFFENCES ACT, chapt. 10.09, § 130 (Tonga), https://ago.gov.to/cms/images/LEGISLATION/PRINCIPAL/1924/1924-0010/CriminalOffencesAct_2.pdf.

²⁰ *Id.* at § 31.

²¹ MAGISTRATE'S COURT ACT, chapt. 3.12, § 30 (Tonga), https://ago.gov.to/cms/images/LEGISLATION/PRINCIPAL/1918/1918-0002/MagistratesCourtAct_3.pdf.

²² EVIDENCE ACT, chapt. 7.21, § 116 (Tonga), https://ago.gov.to/cms/images/LEGISLATION/PRINCIPAL/1924/1924-0011/EvidenceAct_2.pdf.

²³ MANUFACTURE OF INTOXICATING LIQUOR ACT, chapt. 12.08, § 10 (Tonga), https://ago.gov.to/cms/images/LEGISLATION/PRINCIPAL/1942/1942-0018/ManufactureofIntoxicatingLiquorAct_3.pdf.

²⁴ ORDER IN PUBLIC PLACES ACT, chapt. 7.06, §§ 7, 9 (Tonga), https://ago.gov.to/cms/images/LEGISLATION/PRINCIPAL/1903/1903-0016/OrderinPublicPlacesAct_3.pdf.

²⁵ *Tonga Commits to End Human Trafficking in All Its Forms*, TONGA BROADCASTING COMMISSION (Mar. 29, 2017), <http://www.tonga-broadcasting.net/?p=6623>.

²⁶ *Id.*

²⁷ *Voluntary GCM Review*, UNITED NATIONS ESCAP (Mar. 12, 2021), https://www.unescap.org/sites/default/d8files/event-documents/Tonga_Voluntary%20GCM%20Review_ENG.pdf.

²⁸ *U.S. Launches New Project to Counter Trafficking in Persons in the Pacific Region*, USAID (July 29, 2022), <https://www.usaid.gov/pacific-islands/press-releases/7-29-2022-us-launches-new-project-counter-trafficking-persons-pacific-region>.

²⁹ *Id.*

³⁰ *Tongan Couple in Australia Found Guilty of Forced Labor*, MATANGI (Apr. 13, 2019, 10:33 PM), <https://matangitonga.to/2019/04/13/tongan-couple-australia-found-guilty-forced-labour>.

³¹ *Tonga*, GLOBAL ORGANIZED CRIME INDEX (2021), https://ocindex.net/assets/downloads/english/ocindex_profile_tonga.pdf.

³² *Committee on the Rights of the Child Examines Report of Tonga*, UNHRC (May 14, 2019), <https://www.ohchr.org/en/press-releases/2019/05/committee-rights-child-examines-report-tonga>.

³³ *Over 50 Child Marriages a Year in Tonga*, RNZ (May 30, 2019, 8:02 PM), <https://www.rnz.co.nz/international/pacific-news/331923/over-50-child-marriages-a-year-in-tonga>.

³⁴ *Talitha Project*, PEACE PORTAL, <https://www.peaceportal.org/node/274> (last visited Aug. 19, 2022, 1:34 PM).

³⁵ Tonga, *supra* note 18.

³⁶ *Id.*

³⁷ *Id.*

³⁸ *Id.*

³⁹ Sesimani Havea et al., *Kainga (Families) Experiences of a Tongan-Indigenous Faith-Based Violence-Prevention Programme*, 17 ALTERNATIVE 83, 84-85, 91-92 (2021), <https://journals.sagepub.com/doi/pdf/10.1177/1177180121994924>.

⁴⁰ *Id.* at 84.

⁴¹ *Id.* at 92.

⁴² *Country Report for Tonga*, END VIOLENCE AGAINST CHILDREN (Mar. 2020), <https://endcorporalpunishment.org/reports-on-every-state-and-territory/tonga/>.