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SUMMARY PREPARED BY THE OFFICE OF THE HIGH COMMISSIONER FOR
HUMAN RIGHTS, IN ACCORDANCE WITH PARAGRAPH 15 (C) OF
THE ANNEX TO HUMAN RIGHTS COUNCIL RESOLUTION 5/1

Tonga*

This report is a summary of three stakeholders' submissions¹ to the universal periodic review. It follows the structure of the general guidelines adopted by the Human Rights Council. It does not contain any opinions, views or suggestions on the part of the Office of the High Commissioner for Human Rights (OHCHR), nor any judgement or determination in relation to specific claims. The information included herein has been systematically referenced in endnotes and, to the extent possible, the original texts have not been altered. Lack of information or focus on specific issues may be due to the absence of submissions by stakeholders regarding these particular issues. The full texts of all submissions received are available on the OHCHR website. The periodicity of the review for the first cycle being four years, the information reflected in this report mainly relates to events that occurred after 1 January 2004.

* The present document was not edited before being sent to the United Nations translation services.

I. BACKGROUND AND FRAMEWORK

Scope of international obligations

1. The Legal Literacy Project of the Catholic Women's League (LLP) noted that Tonga is not a state party to the International Covenant on Civil and Political Rights (ICCPR) or the International Covenant on Economic, Social and Cultural Rights (ICESCR) which form an important part of the International Bill of Human Rights. While Tonga is a state party to the Convention on the Rights of the Child (CRC), it is not a signatory to the Optional Protocol to the CRC on the sale of children, child prostitution and child pornography which is an important extension of measures that States Parties should undertake in order to guarantee the protection of children from the sale of children, child prostitution and child pornography. CWL noted with increasing concern the slow progress being made by the Government of Tonga towards ratification of the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW). This is despite repeated public assertions from Government Ministers and the Prime Minister since 2006 that ratification is imminent.²

2. The LLP urged the Government of Tonga to consider the importance of ratifying the ICCPR and ICESCR and of signing the Optional Protocol to the CRC on the sale of children, child prostitution and child pornography. It called on the Government of Tonga, as a matter of urgent priority, to ratify CEDAW and its accompanying Optional Protocol and urged the Government of Tonga to make concrete steps towards the domestication of these international commitments into Tongan domestic law³.

II. PROMOTION AND PROTECTION OF HUMAN RIGHTS ON THE GROUND

A. Cooperation with human rights mechanisms

3. The LLP believed that reporting under international instruments is an important national and international accountability mechanism in respect of human rights. Tonga acceded to the CRC on 6 November 1995. The CRC Initial Report of Tonga was due to the United Nations Committee on the Rights of the Child (CRC) in 1997. In October 2006, the Government of Tonga released a Draft CRC Initial Report for public comment. On 12 April 2007, according to the LLP, a workshop to discuss the CRC Initial Report was initiated by the Government of Tonga and attended by representatives of government ministries, UNICEF, church and NGO's which provided a very conducive environment for collaborative input into the finalisation of the CRC Initial Report. However, the LLP noted that despite undertakings to progress towards the completion of the Draft CRC Initial Report for formal submission to the United Nations, the report remains incomplete. Enquiries by the LLP with the Government in January 2008 have failed to determine the status of the report. The LLP noted with concern that Tonga remains in an unenviable group of six State Parties yet to submit any report to the CRC in accordance with the requirements of Article 44 of the CRC.⁴

4. The Kingdom of Tonga acceded to the Convention on the Elimination of Racial Discrimination (CERD) on 17 February 1972, informed the LLP. On 15 November 1972, the Government of Tonga submitted an Initial Report to the United Nations Committee on the Elimination of Racial Discrimination (CERD). Periodic reports pursuant to article 9 of CERD have been due to the CERD every two years since this date. The Government of Tonga has attempted to maintain its periodic reporting obligations, however the LLP noted with concern that the Government of Tonga failed to submit its 15th Periodic Report to the

CERD, due on 17 March 2001, and all subsequent periodic reports thereafter.⁵ Also, the LLP considered it unacceptable that the CRC Initial Report and the CERD 15th Periodic Report are each almost a decade overdue.

5. The LLP called on the Government of Tonga, as a matter of urgent priority, to submit the CRC Initial Report to the CRC, pursuant to its obligations under article 44 of the CRC by no later than 30th May 2008. Further, the LLP also called on the Government of Tonga to submit a combined 15th, 16th, 17th and 18th Periodic Report to the CERD, pursuant to its obligations under article 9 of the CERD as soon as possible.⁶

B. Implementation of international human rights obligations

1. Equality and non discrimination

6. Under the Constitution of Tonga, as indicated by the LLP, women do not have the right to own and inherit registered/customary/family land, instead hereditary land rights belong to male members of the family. Where ownership of land is transferred to a widow, this right of “stewardship” ownership is terminated if she remarries. The LLP continued to work in collaboration with other stakeholders to eliminate poverty and displacement in families headed by single mothers who do not have access to family land and housing. It called on the Government of Tonga, as a matter of urgent priority, to amend land laws that discriminate against women.⁷

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

7. The LLP reported that on 16 November 2006, widespread rioting and looting destroyed the majority of central Nuku’alofa. According to it, in the three months following these events almost 1,200 people on the main island of Tongatapu were arrested by Security Forces. This figure represented approximately 3 per cent of the total population on Tongatapu. The LLP also informed that it received numerous reports of ill-treatment of persons arrested and detained by Security Forces. In May 2007, the LLP assisted a Community Para-legal Taskforce on Human Rights to release a comprehensive report on this issue (Community Para-legal Taskforce on Human Rights, Documenting the Treatment of Detainees and Prisoners by Security Forces in the Kingdom of Tonga, May 2007). The report, based on more than 4 months of research, including the interview of over 80 persons arrested and detained by Security Forces, presented first hand description of events, photographs, medical and psychiatric reports, statistical analysis and interviews with representatives from the Security Forces and Judiciary to document the extent of ill-treatment.⁸

8. The LLP noted that the findings of the report revealed, *inter alia*: 41 per cent reported they suffered physical violence during arrest by Security Forces; the majority of persons interviewed by police reported violence and threats of violence, intended to elicit information and/or confessions during interview; inhumane conditions of detention in the cells of the Central Police Station; including overcrowding, lack of access to medical assistance etc.; incommunicado detention including denial of access to families, lawyers and in many cases medical attention; concerns in relation to the use of restraints on prisoners; Concerns in relation to judicial oversight of the Security Forces, the identification of perpetrators of violence and the integrity of formal complaint procedures.⁹

9. According to the LLP, the report also provided specific recommendations to assist the development of strategies to improve the rights and welfare of persons arrested and detained by Security Forces. To date no actions have been taken by the Government of Tonga on this recommendation, according to the LLP. It further informed that on 8 December 2006 the Special Rapporteur on Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (Special Rapporteur on Torture), the Working Group on Arbitrary Detention and the Special Representative of the Secretary-General on the Situation of Human Rights Defenders sent a Joint Urgent Appeal to the Government of Tonga based on information received by the Special Rapporteur on Torture expressing concern about the situation of persons in detention following civil unrest in November 2006¹⁰.

10. The LLP noted with concern that despite the importance of a Joint Urgent Appeal, as of March 2007, the Government of Tonga had not supplied a response to the Special Rapporteur on Torture, the Working Group on Arbitrary Detention and the Special Representative of the Secretary-General on the Situation of Human Rights Defenders.¹¹

11. The LLP called on the Government of Tonga, as a matter of urgent priority, to respond to the Joint Urgent Appeal issued on 8th December 2006 by the Special Rapporteur on Torture the Working Group on Arbitrary Detention and the Special Representative of the Secretary-General on the Situation of Human Rights Defenders. It further called on the Government of Tonga to consider the recommendations contained in the Community Paralegal Taskforce on Human Rights report, *Documenting the Treatment of Detainees and Prisoners by Security Forces in the Kingdom of Tonga*, in particular, as a matter of urgent priority to¹²:

(a) Establish a public and independent board of inquiry with the ability to impose administrative sanctions and to recommend the initiation of criminal proceedings against members of the Security Forces found to be responsible for the ill-treatment of detainees and prisoners;

(b) Establish a multi-agency taskforce (including NGO representatives) to conduct an immediate review of Police lock-up and prison facilities in accordance with international standards,

(c) Establish a formal system of accountability at all levels of the Tonga Police Force and Tonga Defence Service in relation to the use of force and treatment of persons in custody;

(d) Establish a Children's Justice System under authority of statute which includes provisions governing the treatment of children in all aspects of the legal system.

12. The Global Initiative to End All Corporal Punishment of Children (GIEACPC) informed that corporal punishment is lawful in the home. Children have limited protection from violence under the Criminal Offences Act (1988). GIEACPC further noted that corporal punishment in schools is prohibited under the Education Act (2002) and that corporal punishment is lawful in the penal system. The Criminal Offences Act (articles 130 and 142) allow juvenile offenders to be whipped in place of or in addition to imprisonment for certain offences against the person. Furthermore, GIEACPC informed that there is no explicit prohibition of corporal punishment as a disciplinary measure in penal

institutions¹³. GIEACPC expressed the hope that Tonga introduces legislation as a matter of urgency to prohibit corporal punishment of children in all settings, including in the home.¹⁴

13. Violence against women is an ongoing issue in the Kingdom of Tonga, for which only small amounts of empirical data are available, noted the LLP. Using indicators and trends present in international research to extrapolate local data, the LLP estimated that between 31 per cent and 62 per cent of women are victims of violence by an intimate partner every year.¹⁵

14. The LLP is currently preparing a National Domestic Violence Study to investigate the prevalence, causes, nature, and consequences of violence against women. It hopes that the findings of this study will be used by the Government of Tonga, in partnership with NGO stakeholders, to effectively implement multi-sectorial social policies and strategies to address this human rights and development issue. The LLP welcomed the recent establishment of a Domestic Violence Unit within the Ministry of Police, under a partnership with the New Zealand Police Force and the Pacific Prevention of Domestic Violence Program.¹⁶

15. The LLP furthermore urged the Government of Tonga to provide its full support in the implementation of research and the development of multi-sectorial social policies and strategies to address violence against women. It also urged the Government of Tonga to amend its domestic law to include protection legislation in compliance with CRC and CEDAW.¹⁷

3. Right to privacy

16. According to the International Lesbian and Gay Association (ILGA), Tonga maintains criminal sanctions against sexual activity between consenting adults, citing in particular the Laws of Tonga Criminal Offences [Cap 18] 1988 Edition, articles 136, 137, 139 and 140. “Whoever shall be convicted of the crime of sodomy with another person or bestiality with any animal shall be liable at the discretion of the Court to be imprisoned for any period not exceeding ten years and such animal shall be killed by a public officer.” (Substituted by Act 9 of 1987). Art. 137. “It is an offence for a person to assault another person with intent to commit sodomy.” (Inserted by Act 9 of 1987). Art. 139. “Whoever shall attempt to commit the said abominable crime of sodomy or shall be guilty of an assault with intent to commit the same or of any indecent assault upon any male person shall be liable at the direction of the Court to imprisonment for any term not exceeding 10 years.” Art. 140. “On the trial of any person upon a charge of sodomy or carnal knowledge it shall not be necessary to prove the actual emission of seed but the offence shall be deemed complete on proof of penetration only.”¹⁸

4. Freedom of expression, association and peaceful assembly

17. The LLP noted with concern the approach of the Government of Tonga to discredit and publicly condemn studies and reports conducted by national and international NGO’s and other groups that report on the human rights situation in Tonga. Often an approach to protect and advocate for human rights in Tonga is viewed by some Government officials as an “anti-government stance” and “siding at times with the political opposition under the guise of protecting civil liberties” (See for example: Prime Minister of Tonga’s address, 2007 Pacific Regional CSO Forum, 12 October 2007, Tonga)¹⁹.

18. According to the LLP, in May 2007, the comprehensive report of the Community Para-legal Taskforce on Human Rights on the Treatment of Detainees and Prisoners by Security Forces in the Kingdom of Tonga was described by the Minister of Police on National Radio and Television as “one sided” and “advocates the rights of those who torched Nuku'alofa”.²⁰

19. The LLP indicated that in January 2008 a report by Reporters Without Borders on Tonga was publicly condemned on National Television by the Minister for Information who said: “In the absence of the empirical data that Reporters Without Borders derived from the responses to their questionnaire and without access to the criteria used to calculate the final score for Tonga, the ranking that "Reporters Without Borders" have given for Tonga is meaningless.”²¹

20. The LLP noted that in January 2008 the Transparency International Corruption Perception Index 2007, which listed Tonga in the top 10 countries most affected by corruption, was publicly discredited and dismissed on Regional Radio by the Prime Minister's Political Adviser as being a ranking that was “undeserved” and “meaningless”.²²

III. ACHIEVEMENTS, BEST PRACTICES, CHALLENGES AND CONSTRAINTS

21. The LLP welcomed recent amendments by the Government of Tonga to the Nationality Act [Cap. 59] which remove discrimination in law regarding the granting of Tongan citizenship to a child born of a Tongan mother and a non-Tongan father²³.

IV. KEY NATIONAL PRIORITIES, INITIATIVES AND COMMITMENTS

n/a

V. CAPACITY-BUILDING AND TECHNICAL ASSISTANCE

22. The LLP called on the Government of Tonga, in conjunction with the United Nations Human Rights Council, to consider the implementation of training throughout senior government posts on the role and importance of NGO's in good governance and human rights reporting and accountability²⁴.

Notes

¹ The stakeholders listed below have contributed information for this summary; the full texts of all original submissions are available at: www.ohchr.org. (One asterisk denotes a non-governmental organization in consultative status with the Economic and Social Council.)

Civil Society

LLP	Legal Literacy Project of the Catholic Women's League, Nuku'alofa, Tonga, UPR Submission, February 2008
GIEACPC	Global Initiative to End All Corporal Punishment of Children, London, United Kingdom, UPR submission, November 2007
ILGA	International Lesbian and Gay Association, ILGA-Europe*, International Gay and Lesbian Human Rights Commission, ARC International, Brussels, Belgium, joint UPR submission, February 2008

² Legal Literacy Project of the Catholic Women's League, Nuku'alofa, Tonga, UPR Submission, February 2008, pp.1-2.

³ Legal Literacy Project of the Catholic Women's League, Nuku'alofa, Tonga, UPR Submission, February 2008, pp.1-2.

⁴ Legal Literacy Project of the Catholic Women's League, Nuku'alofa, Tonga, UPR Submission, February 2008, p.2.

⁵ Legal Literacy Project of the Catholic Women's League, Nuku'alofa, Tonga, UPR Submission, February 2008, pp.2-3.

⁶ Legal Literacy Project of the Catholic Women's League, Nuku'alofa, Tonga, UPR Submission, February 2008, p.3.

⁷ Legal Literacy Project of the Catholic Women's League, Nuku'alofa, Tonga, UPR Submission, February 2008, p.5.

⁸ Legal Literacy Project of the Catholic Women's League, Nuku'alofa, Tonga, UPR Submission, February 2008, p.4.

⁹ Legal Literacy Project of the Catholic Women's League, Nuku'alofa, Tonga, UPR Submission, February 2008, pp.3-4.

¹⁰ Legal Literacy Project of the Catholic Women's League, Nuku'alofa, Tonga, UPR Submission, February 2008, p.4.

¹¹ Legal Literacy Project of the Catholic Women's League, Nuku'alofa, Tonga, UPR Submission, February 2008, p.4.

¹² Legal Literacy Project of the Catholic Women's League, Nuku'alofa, Tonga, UPR Submission, February 2008, pp.4-5.

¹³ Global Initiative to End All Corporal Punishment of Children, London, United Kingdom, UPR submission, November 2007, p.2.

¹⁴ Global Initiative to End All Corporal Punishment of Children, London, United Kingdom, UPR submission, November 2007, p.1.

¹⁵ Legal Literacy Project of the Catholic Women's League, Nuku'alofa, Tonga, UPR Submission, February 2008, p.5.

¹⁶ Legal Literacy Project of the Catholic Women's League, Nuku'alofa, Tonga, UPR Submission, February 2008, p.5.

¹⁷ Legal Literacy Project of the Catholic Women's League, Nuku'alofa, Tonga, UPR Submission, February 2008, p.5.

¹⁸ International Lesbian and Gay Association, Brussels, Belgium, joint UPR submission, February 2008, p.1.

¹⁹ Legal Literacy Project of the Catholic Women's League, Nuku'alofa, Tonga, UPR Submission, February 2008, pp.5-6.

²⁰ Legal Literacy Project of the Catholic Women's League, Nuku'alofa, Tonga, UPR Submission, February 2008, p.6.

²¹ Legal Literacy Project of the Catholic Women's League, Nuku'alofa, Tonga, UPR Submission, February 2008, p.6.

²² Legal Literacy Project of the Catholic Women's League, Nuku'alofa, Tonga, UPR Submission, February 2008, p.6.

²³ Legal Literacy Project of the Catholic Women's League, Nuku'alofa, Tonga, UPR Submission, February 2008, p.1.

²⁴ Legal Literacy Project of the Catholic Women's League, Nuku'alofa, Tonga, UPR Submission, February 2008, p.6.