

KINGDOM OF TONGA
NGO Submission to the United Nations Universal Periodic Review

Submission of the Legal Literacy Project, Kingdom of Tonga
Second Session of the Universal Periodic Review Working Group, 5-16 May 2008

February 2008

1. The Legal Literacy Project (LLP) of the Catholic Women's League is a registered not for profit, Non-Government Organisation (NGO), operating under a variety of sources and with the cooperation of other regional supporters. Since establishment in 1996, the LLP has been the foremost provider of legal and human rights education, advocacy, awareness and empowerment, particularly to women and children in the Kingdom of Tonga. The LLP delivers a range of services including human rights awareness workshops, legislative review campaigns on issues such as gender inequality and juvenile justice, the provision of counselling and victim support and the forging of stakeholder links and building partnerships. The LLP also provides administrative support functions to 15 Community Para-Legals trained, who are representatives from a wide spectrum of Tongan NGO's and community groups who advocate for the protection of human rights.
2. In this submission the Legal Literacy Project provides information on a range of current human rights issues in Tonga, including concerns regarding the ratification of international instruments and reporting pursuant to international instruments to which Tonga is a signatory, concerns regarding women's rights, the abuse and ill-treatment of detainees and prisoners by Security Forces and the discrediting of human rights defenders. Recommendations relating to these areas of concern are listed under the relevant sections.

Ratification of International Human Rights Instruments

3. The LLP notes that Tonga is not a state party to the International Covenant on Civil and Political Rights (ICCPR)¹ or the International Covenant on Economic, Social and Cultural Rights (ICESCR)² which form an important part of the International Bill of Human Rights (IBOR)³.
4. The LLP notes that while Tonga is a state party to the Convention on the Rights of the Child (CRC)⁴, 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.
5. The LLP notes, 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

¹ Adopted and opened for signature, ratification and accession by General Assembly resolutions 2200 A (XXI) OF 16th December, 1966. Entry into force ; 23rd March, 1976.

² Adopted and opened for signature, ratification and accession by General Assembly resolution 2200 A (XXI) of 16 December; 1966. Entry into force; 3 January, 1976.

³ International Bill of Rights consists of the Universal Declaration of Human Rights, International Covenant on Civil and Political Rights and the International Covenant on Economic Social and Cultural Rights.

⁴ Adopted and opened for signature, ratification and accession by General Assembly resolution 44/25 of 20th November, 1980. Entry into force; 2 September, 1990.

Ministers and the Prime Minister since 2006 that ratification is imminent.⁵ The LLP does, however, welcome 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 father.

Recommendations:

- Recommendation 1. The LLP urges the Government of Tonga to consider the importance of ratifying the ICCPR and ICESCR.
- Recommendation 2. The LLP urges the Government of Tonga to consider the importance of signing the Optional Protocol to the CRC on the sale of children, child prostitution and child pornography.
- Recommendation 3. The LLP calls on the Government of Tonga, as a matter of urgent priority, to ratify CEDAW and its accompanying Optional Protocol.
- Recommendation 4. The LLP urges the Government of Tonga to make concrete steps towards the domestication of these international commitments into Tongan domestic law

Reporting pursuant to International Instruments

6. The LLP believes that reporting under international instruments is an important national and international accountability mechanism in respect of human rights. It is also an opportunity for the LLP to advocate for and assist in the implementation of important findings and recommendations from these reports.
7. The Kingdom of Tonga acceded to the CRC on 6 December 1995⁶. The CRC Initial Report of the Kingdom of Tonga was due to the UN Committee on the Rights of the Child (UNCRC) on 5 December 1999.
8. In October 2006, the Government of Tonga released a Draft CRC Initial Report for public comment. On 12 April 2007, 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.
9. However, despite undertakings to progress 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.
10. The LLP notes with concern that Tonga remains in an unenviable group of six state parties yet to submit any report to the UNCRC in accordance with the requirements of Article 44 of the CRC. Four of the state parties in this group are from the Pacific Region.
11. The Kingdom of Tonga acceded to the Convention on the Elimination of Racial Discrimination (CERD) on 17 February 1972⁷. On 15 November 1972, the Government of Tonga submitted an Initial Report to the UN Committee on the Elimination of Racial Discrimination (UNCERD).

⁵ See for example: Prime Minister of Tonga in *Address by the Prime Minister, Hon. Dr. Feleti Sevele, to Open the CEDAW Workshop for Members of Parliament*, Nuku'alofa, 1st September 2006; Minister for Education Dr Tevita Palefau in Radio New Zealand International *Tonga poised to ratify CEDAW*, 21 February 2007.

⁶ See <http://www2.ohchr.org/english/bodies/ratification/2.htm>

⁷ See <http://www2.ohchr.org/english/bodies/ratification/2.htm>

Periodic reports pursuant to article 9 of CERD have been due to the UNCERD every two years since this date. The Government of Tonga has attempted to maintain its periodic reporting obligations, however the LLP notes with concern that the Government of Tonga failed to submit its 15th Periodic Report to the UNCERD, due on 17 March 2001, and all subsequent periodic reports thereafter.

12. It is unacceptable that the CRC Initial Report and the CERD 15th Periodic Report are each almost a decade overdue.

Recommendations:

Recommendation 5. The LLP calls on the Government of Tonga, as a matter of urgent priority, to submit the CRC Initial Report to the UNCRC, pursuant to its obligations under article 44 of the CRC by no later than 30th May 2008.

Recommendation 6. The LLP calls on the Government of Tonga to submit a combined 15th, 16th, 17th and 18th Periodic Report to the UNCERD, pursuant to its obligations under article 9 of the CERD as soon as possible.

Treatment of persons in detention:

13. On 16 November 2006, widespread rioting and looting destroyed the majority of central Nuku'alofa. 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% of the total population on Tongatapu.
14. The LLP 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 report⁸ on this issue (refer to Annex 1).
15. 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.
16. Findings of the report revealed, inter alia:
- a) 41% of arrested persons reported that they suffered physical violence during arrest by Security Forces, predominately resulting in head and facial trauma;
 - b) The majority of persons interviewed by police reported violence and threats of violence, intended to elicit information and/or confessions during interview;
 - c) Inhumane conditions of detention in the cells of the Central Police Station; including overcrowding, lack of access to medical assistance etc – so give some details of inhumane treatment
 - d) Incommunicado detention including denial of access to families, lawyers and in many cases medical attention;

⁸ Community Para-legal Taskforce on Human Rights, *Documenting the Treatment of Detainees and Prisoners by Security Forces in the Kingdom of Tonga*, May 2007.

- e) Concerns in relation to the use of restraints on prisoners and adherence of Security Forces to standard criminal procedures;
 - f) Concerns in relation to judicial oversight of the Security Forces, the identification of perpetrators of violence and the integrity of formal complaint procedures.
17. 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 Government of Tonga on this recommendation.
18. 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. This is on the basis of information received by the Special Rapporteur on Torture expressing concern about the situation of persons in detention following civil unrest in November 2006.⁹
19. The LLP notes 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 in accordance with this human rights monitoring mechanism.¹⁰

Recommendations:

- Recommendation 7. The LLP calls on the Government of Tonga, as a matter of urgent priority, to respond to the Joint Urgent Appeal issued 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 on 8th December 2006.
- Recommendation 8. The LLP calls on the Government of Tonga to consider the recommendations contained in the Community Para-legal 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 to:
- 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.

⁹Special Rapporteur on Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, *Report on the Implementation of General Assembly Resolution 60/251 of 15 March 2006 Entitled "Human Rights Council" Addendum*, A/HRC/4/33/Add.1, 20 March 2007.

¹⁰ Ibid

- 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.

Women's Rights

- 20. Under the *Constitution of Tonga*, 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 continues 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.
- 21. Violence against women is an ongoing issue in the Kingdom of Tonga, for which only small amounts of empirical data are available. Using indicators and trends present in international research to extrapolate local data, the LLP estimates that between 31% and 62% of women are victims of violence by an intimate partner every year.¹¹
- 22. The LLP is currently preparing a National Domestic Violence Study to investigate the prevalence, causes, nature, and consequences of violence against women. The LLP 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.
- 23. The LLP welcomes 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.

Recommendations:

- Recommendation 9. The LLP calls on the Government of Tonga, as a matter of urgent priority, to amend land laws that discriminate against women.
- Recommendation 10. The LLP urges 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.
- Recommendation 11. The LLP urges the Government of Tonga to amend its domestic law to include protection legislation in compliance with CRC and CEDAW

Discrediting of human rights defenders:

- 24. The LLP notes 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

¹¹ Legal Literacy Project, *National Study on Domestic Violence - Project Proposal for Funding Assistance to AusAID*, June 2007.

and advocate for human rights in Tonga is viewed by some Government officials as an “anti-government stance”¹² and “siding at times with the political opposition under the guise of protecting civil liberties”.¹³

25. 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”¹⁴ and “advocates the rights of those who torched Nuku'alofa”.¹⁵

26. In January 2008 the Reporters Without Borders Worldwide Press Freedom Index 2007, which ranked Tonga 119th of 169 countries, was publicly condemned on National Television by the Minister for Information who said;

“In the absence of the empirical data that they [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.”¹⁶

27. 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”.¹⁷

Recommendations:

Recommendation 12. The LLP calls 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 accountability.

To date there have been no public consultations between the Government of Tonga and civil society representatives regarding the periodic reporting process of the UNHRC. Therefore, this report was written independently of any consultation with the Government of Tonga. To the best of our knowledge, there has been no internal consultation on the reporting process within Tonga in general.

For further information on the submission of the Legal Literacy Project please contact the undersigned.

¹² See for example: Prime Minister of Tonga's address, 2007 Pacific Regional CSO Forum, 12 October 2007, Tonga

¹³ Ibid.

¹⁴ Tonga Broadcasting Corporation, *Minister of Police concern over "one-sided" report on police and defense ill treatment of 16/11 suspects*, 17 May 2007.

¹⁵ Ibid

¹⁶ Matangi Tonga Online, *Tonga Questions Press Freedom Index*, 6 November 2007; Tonga Broadcasting Corporation “Minister of Information doubts report by Reporters Without Borders”

¹⁷ Radio New Zealand International, *Tongan Government Spokesman Says High Ranking as a Corrupt Country is Meaningless*, 29 January 2008.

1st February 2008