

Universal Periodic Review (43rd session)

Contribution of UNESCO

Tonga

I. Background and framework

<i>Title</i>	<i>Date of ratification, accession, acceptance, or succession</i>	<i>Declarations /Reservations</i>	<i>Recognition of specific competences of treaty bodies</i>	<i>Reference to the rights within UNESCO's fields of competence</i>
Convention against Discrimination in Education 1960	Not a State Party	Reservation to this Convention shall not be permitted		Right to education
Convention concerning the Protection of the World Cultural and Natural Heritage (1972)	Acceptance on 30 April 2004			Right to take part in cultural life
Convention for the Safeguarding of the Intangible Cultural Heritage (2003)	Acceptance on 26 January 2010			Right to take part in cultural life
Convention on the Protection and Promotion of the Diversity of Cultural Expressions (2005)				Right to take part in cultural life

II. Promotion and protection of human rights on the ground

A. Education

¹ <https://www.parliament.gov.to/parliamentary-business/documents/constitution-of-tonga>

1. The Constitution of Tonga (revised edition of 2020),¹ does not enshrine the right to education. The main law on education is the education act (revised edition of 2020).² It enshrines the right to education for children (Article 3) and compulsory education between four and 18 years old (article 98), however, school fees may be charged (article 98 (3)).

B. Freedom of opinion and expression

Constitutional and Legislative Framework:

2. Article 7 of the Constitution of Tonga of 1875 guarantees freedom of expression and freedom of press, stating that it is “lawful for all people to speak, write and print their opinions and no law shall ever be enacted to restrict this liberty”.³ The same article allows for restrictions of freedom of expression for several reasons, including “defamation”, “official secrets” or “the protection of the King and the Royal Family”. An Amendment to the Constitution in 2003 provides legal basis “to enact laws to regulate the operation of any media” and adds further grounds for restriction of freedom of expression if “considered necessary” for reasons of “public interest, national security, public order, morality, cultural traditions of the Kingdom, or privileges of the Legislative Assembly and to provide for contempt of Court and the commission of any offense”.
3. Tonga has several legislations that allow the authorities to regulate the media. The Communications Act of 2015 establishes a communications licensing and regulation framework.⁴ The Communications Commission Act of 2015 establishes the Communications Commission.⁵ The Electronic Communication Abuse Offences Act of 2020 regulates what is considered electronic communication abuse in Tonga.⁶

¹ <https://www.parliament.gov.to/parliamentary-business/documents/constitution-of-tonga>

² https://ago.gov.to/cms/images/LEGISLATION/PRINCIPAL/2013/2013-0023/EducationAct_3.pdf

³ <https://parliament.gov.to/parliamentary-business/documents/constitution-of-tonga/file/487-act-of-constitution-of-tonga-2020-revised-edition>

⁴ www.paclii.org/cgi-bin/sinodisp/to/legis/num_act/ca2015176/index.html?stem=&synonyms=&query=defamation

⁵ www.paclii.org/cgi-bin/sinodisp/to/legis/num_act/cca2015295/cca2015295.html?stem=&synonyms=&query=Communications%20Commission%20Act%202015

⁶ www.paclii.org/cgi-bin/sinodisp/to/legis/num_act/ecaca2020360/ecaca2020360.html?stem=&synonyms=&query=Electronic%20Communication%20Abuse%20Offences%20Act%202020

Those found guilty are liable to a fine up to \$TP10,000 or imprisonment of up to 3 years, or both, in the case of using a service to abuse and cause harm by posting an electronic communication or using a service to bully, menace, harass or cause harm.

4. The Media Operators Act of 2003 sets the condition under which internationally owned and operated media outlets can operate in the country.⁷ The Prohibited Publications Act regulates and restricts the import, publication and sale of certain publications.⁸ This Act does not list criteria for the selection of the prohibited publications, but leaves this decision to the King, who will declare publications to be prohibited if he “is of the opinion that the importation of any publication is contrary to the public interest”.
5. There is no access to information law in Tonga.
6. Defamation is regarded as a criminal offense under the Defamation Act.⁹ Defamation of the sovereign is liable to a fine not exceeding \$400 and in default of payment to imprisonment for any term not exceeding 2 years. Defamation of dignitaries and other persons is also punishable with lower fines and prison terms.
7. In May 2020, Tonga’s Ministry of Information and Communications passed eight regulations¹⁰, without seeking input from the Media Association of Tonga. These regulations include a \$TP2,000 penalty for publishing or broadcasting sensitive information, without providing a definition of the term within the law.

Implementation of the law:

8. The Communications Commission is responsible for licensing and controlling radio frequencies and for enforcing the Communications Act of 2015 and is composed of four members, designated by an Appointments Committee, which consists of the Minister responsible for communications, an ICT Expert and a representative of the industry consumers who are appointed by the Minister.¹¹
9. The Ministry of Information and Communications has the power under sections 96 and 98 of the Communications Act of 2015 to censor, subject to the approval of the

⁷ [www.paclii.org/cgi-](http://www.paclii.org/cgi-bin/sinodisp/to/legis/num_act/moa2003166/moa2003166.html?stem=&synonyms=&query=Media%20Operators%20Act%20of%202003)

[bin/sinodisp/to/legis/num_act/moa2003166/moa2003166.html?stem=&synonyms=&query=Media%20Operators%20Act%20of%202003](http://www.paclii.org/cgi-bin/sinodisp/to/legis/num_act/moa2003166/moa2003166.html?stem=&synonyms=&query=Media%20Operators%20Act%20of%202003)

⁸ www.paclii.org/cgi-bin/sinodisp/to/legis/consol_act/ppa246/ppa246.html?stem=&synonyms=&query=Prohibited%20Publications%20Act

⁹ www.paclii.org/cgi-bin/sinodisp/to/legis/consol_act/da99/da99.html?stem=&synonyms=&query=defamation

¹⁰ <https://asiapacificreport.nz/2020/08/17/fury-in-tonga-at-new-spot-fine-limits-quietly-imposed-on-news-media/>

¹¹ [www.paclii.org/cgi-](http://www.paclii.org/cgi-bin/sinodisp/to/legis/num_act/ca2015176/index.html?stem=&synonyms=&query=defamation)

[bin/sinodisp/to/legis/num_act/ca2015176/index.html?stem=&synonyms=&query=defamation](http://www.paclii.org/cgi-bin/sinodisp/to/legis/num_act/ca2015176/index.html?stem=&synonyms=&query=defamation)

Minister, a licensee if the media supply content that is indecent or obscene, displays excessive violence, is blasphemous, treasonous or seditious, defamatory or goes against Tonga’s laws. Under section 100 to 102 of the Communications Act 2015, the Ministry may also require a licensee to supply content of religious interest, related to national interest matters, or educational matters. Under section 104 of the Communications Act 2015, the Ministry may also determine the “extent and manner in which a licensee may provide political or controversial content.”¹² The Ministry of Information and Communications oversees the application of the Media Operators Act of 2003. Broadcast licensing is controlled by the Ministry of Information and Communications.

Safety of journalists:

10. Since 2006, when UNESCO began systematic monitoring, no killings of journalists have been recorded in Tonga¹³ as of 5 August 2022.

III. Review and specific recommendations

A. Education

Policy framework

11. The latest education policy framework was for the period 2004-2019,¹⁴ at the time of this contribution, no new framework has been identified.

Free and compulsory education

¹² www.paclii.org/cgi-bin/sinodisp/to/legis/num_act/ca2015176/index.html?stem=&synonyms=&query=defamation

¹³ <https://en.unesco.org/themes/safety-journalists/observatory/country/223828>

¹⁴ <https://neqmap.bangkok.unesco.org/wp-content/uploads/2019/08/Tonga-Education-Policy-Framework-2004-2019.pdf>

12. The Education 2030 Framework for Action requires all states to guarantee at least twelve years of free primary and secondary education, of which at least nine are compulsory. While Tonga provides for compulsory education between 4 and 18 years old, the legislation does not guarantee free education as fees can be charged (Article 98 of the Education act). The Policy Framework (2004-2019) stated that education is free and compulsory between 6 and 14 but this is not reflected in the law. Therefore, Tonga could be encouraged to amend its legislation to guarantee free education for at least twelve years and adopt a new policy framework.

Quality education

13. Tonga is making good progress in enrollment in pre-primary education with 96.7% in participation one year before the official primary entry age. While the completion of primary (98.21 in 2019, UIS) and lower-secondary (92.43% in 2019, UIS) are on track, challenge remains in quality of education and achieving outcomes with only 47% of students at the end of primary attained minimum proficiency in literacy, while numeracy attainment is much higher at 92% in 2018 (PILNA, SPC). Access and attainment of upper secondary education as well as TVET, higher and continuing education remain low with only 35.84% of upper secondary completion rate in 2019 (UIS).

Inclusion

14. Tonga adopted Part XXI, Special Needs and Inclusive Education, in the 2013 Education Act and participated in the regional review of Pacific Inclusive Education Framework (PRIEF) in 2021, while continued efforts in ensuring education rights for persons with disability would be needed. Tonga is one of only four countries around the world who have taken part in the Leaving No One Behind assessment using its latest national census and identified gaps in education systems.

15. Tonga held a series of national consultations including with youth groups in preparation for TES in August 2022 and is currently finalizing the national statement

of commitment. The priority areas discussed in the draft include equitable access to quality education using technologies, engaging families and communities, scaling up inclusive teacher training and accessible school infrastructure for persons with disabilities, and governmental non-governmental partnerships.

Monitoring

16. During the last UPR cycle, Tonga was recommended to establish a monitoring and reporting system for the education policy framework (93.15 and 93.16). Tonga is participating in the SDG4 Benchmarking exercise led by UIS and the Pacific Community in the effort to collect timely and quality education data and utilization of data in education policy and practice. However, the Tonga Statistics department contains statistics on education up to 2012 only.¹⁵

Gender Equality

17. While several recommendations were made during the last UPR cycle on raising the legal age of marriage (93.29, 93.30, 93.49, 93.50), and supported by the State, the 'births, deaths and marriages registration act' still authorizes the marriage from 15 years old with parental consent (necessary until 18 years old).¹⁶ According to the Joint CEDAW-CRC General Recommendation/Comment, capable child below the age of 18 may be allowed to get married provided that the child is at least 16 years old and that such decisions are made by a judge based on legitimate exceptional grounds defined by law and on the evidence of maturity without deference to cultures and traditions. Therefore, The State should be recommended to set a minimum age of marriage at 18 years old and allow judicial dispensation only for marriage below this age, and in no case should the absolute minimum age fall below the age of 16.

¹⁵ See: <https://tongastats.gov.to/statistics/social-statistics/education/>

¹⁶

https://ago.gov.to/cms/images/LEGISLATION/PRINCIPAL/1926/1926-0016/BirthsDeathsandMarriagesRegistrationAct_3.pdf

18. One recommendation referred to the necessity to adopt legislative and political measures to combat discrimination against women and guarantee gender equality in the public and private spheres (93.38), as well as promoting equality between women and men (93.41). Three officials from the Tonga Ministry of Education and Training participated in the Gender Equality training series in 2021, organized by UNESCO Apia and GENIA Network. The contents ranged from the concept to practical applications of gender equality in education sector analysis, strategies, training, school environment, etc.

Climate change

19. Two recommendations made during the last UPR concerned Human Rights and Climate change (93.25 and 93.26). To address this issue, Tonga made some progress. Through the UNESCO JFIT programme in 2020-2021, Tonga participated in the Pacific regional Education for Sustainable Development teaching and learning resource development, training of trainers and planning for further integration of ESD in curriculum and teacher training. The e-materials developed encompass all levels from early childhood to tertiary education. Tonga played a leading role in convening Pacific SIDS and disseminate these materials through a series of virtual workshops held in 2021.

Distance learning and digital education

20. At the onset of global COVID-19 pandemic in 2020 and related preventative school closure, the Ministry of Education and Training took initiatives to compensate the loss of learning hours by introducing remedial programmes, adjusting schooling dates and increasing class time, adjusting and reducing some of the curriculum contents, and offering five delivery modes of learning namely, paper-based, online, TV, radio and blended learning. UNESCO contributed to the joint multi-sectoral UN assessment of COVID impact in 2020-2021 and took a lead in education. The findings informed the Education Ministers forum in 2021. In addition, through GPE funding,

UNESCO supported Tonga MET and other Pacific SIDS in the development of Learning Management Platform and online/offline resources and supported related teacher training in 2020-2022.

21. The UNESCO [Initiative on the Evolving Right to Education](#) highlighted the need to ensure digital skills and digital inclusion.
22. As many countries, Tonga has developed a COVID-19 response plan for education.¹⁷ It has two main outcomes:
 - 1 - The physical and emotional health of learners and teachers supported through safe learning environments
 - 2 - The education system is more resilient and all students have access to educational opportunities
23. One of the outputs focuses on distance learning resources of different types depending on the grade levels as well as on developing support for parents and capacity building for teachers.
24. The framework also contains a section dedicated to monitoring, with performance information to be captured at the end of each phase.

Specific recommendations:

25. Tonga should be encouraged to:
 - i. Ratify the Convention against Discrimination in Education
 - ii. Explicitly enshrine education as a right in the Constitution, enforceable in court, and legally guarantee free education for at least twelve years
 - iii. Continue to work on collecting education data and improve the information available, including on the monitoring of the functioning of the education system and the implementation of the education policy framework
 - iv. Raise the age of marriage to 18 years old for both boys and girls with exception from 16 years old with judicial consent only

¹⁷ Available at : <https://www.globalpartnership.org/blog/tonga-building-resilient-education-system-mitigate-impact-covid-19-and-natural-disasters>

- v. Submit regularly comprehensive national reports for the periodic consultations on UNESCO's education-related standard-setting instruments, and notably on the Recommendation against Discrimination in Education
- vi. Share with UNESCO any relevant information to update its country profile on UNESCO's Observatory on the Right to Education¹⁸ and Her Atlas¹⁹.

B. Freedom of opinion and expression

- 26. Tonga is recommended to decriminalize defamation and place it within a civil code that is in accordance with international standards.
- 27. Tonga is recommended to strengthen the independence of broadcast licensing in line with international standards.
- 28. Tonga is recommended to revise the Electronic Communication Abuse Offences Act of 2020 and the Communications Act of 2015, aligning it to international human rights standards and clarifying the ambiguities mentioned in the laws.
- 29. Tonga is encouraged to introduce an access to information law that is in accordance with international standards, in particular establishing an independent oversight institution with the capacity to implement access to information law.

C. Cultural Rights

- 30. Tonga is encouraged to ratify the Convention on the Protection and Promotion of the Diversity of Cultural Expressions (2005). The UNESCO Culture Conventions promote access to and participation in cultural heritage and creative expressions and, as such, are conducive to implementing the right to take part in cultural life as defined in article 27 of the Universal Declaration of Human Rights and article 15 of the International Covenant on Economic, Social and Cultural Rights. In doing so, Tonga is encouraged to facilitate the participation of communities, practitioners, cultural actors and NGOs from civil society as well as vulnerable groups (minorities,

¹⁸ <http://www.unesco.org/education/edurights/index.php?action=countries&lng=en>

¹⁹ <https://en.unesco.org/education/girls-women-rights>

indigenous peoples, migrants, refugees, young peoples and peoples with disabilities), and to ensure that equal opportunities are given to women and girls to address gender disparities.

D. Freedom of scientific research and the right to benefit from scientific progress and its applications

31. Tonga did not submit its National Report on the implementation of the *Recommendation on Science and Scientific Researchers (2017)* for the consultation period from 2017 to 2020. Therefore, Tonga is encouraged to report to UNESCO on its implementation actions, especially noting legislative, regulatory or other measures adopted by it and funding allocated, with the aim to ensure application of these norms and standards in national law, policy and practice.
32. Particular attention should be paid to measures towards the realization of the human rights of scientific researchers (freedom of association, freedom of research, expression and publication, working conditions, etc.) and also of human rights related to the practice of science. The latter include access to and uses of scientific knowledge and data, the sharing of benefits of scientific progress and its applications, the principle of equality and non-discrimination, with emphasis on removal of gender barriers in access to science education and scientific careers, the protection of human subjects of research, as well as the dialogue between scientific community and society.
33. Furthermore, Tonga is encouraged to share data on national policy and practice and expand input on issues covered by the 2017 Recommendation in its national report to the UPR, particularly in relation to the right to share in scientific advancement and its benefits (article 27, Universal Declaration of Human Rights). This will allow further discussions thereon at the Human Rights Council and the formulation of specific recommendations. Within this framework, Tonga is urged to consider addressing issues of equality and non-discrimination in access to education, as well as to scientific benefits and their applications, and to include reference to the relevant

dimensions of the right to share in scientific advancement and its benefits in its reporting on the impact of the COVID-19 pandemic and the assessment of responses thereto. Finally, Tonga is invited to expand the scope of application of freedom of expression to include scientists and scientific researchers.