



JUST ATONEMENT INC.

justice
hope peace unity equal opportunity
golden age
progress sustainability democracy freedom
human rights harmony civilization

Just Atonement Inc.

745 5th Ave, Suite 500
New York, New York 10151

Executive Director: [Dave Inder Comar](#)

Email: inder@justatonement.org

Telephone: +1 646 600 5470

Just Atonement Inc. (JAI) is a legal non-profit that trains new advocates to address threats to human rights, a livable planet, and the international rule of law.

JAI was founded in the United States of America in 2017.

JAI invites and organizes legal professionals globally into a single order and aligns a vision of a peaceful, sustainable world, governed by the democratic rule of law; litigates in courts all over the world on cutting edge human rights cases to build peace and sustainability, and to defend democracy; and advocates for a vision of a true Golden Age for humanity: a world where countries settle their disputes peacefully, manage social and economic systems that are in harmony with the planet, and govern themselves through the principles of democracy, the rule of law, and human rights.

JAI submits this written submission with respect to the Universal Periodic Review of Tonga.

I. Summary of Conclusions

- 1. Climate change is already affecting Tonga, and in order to uphold the rights of its people, Tonga must adapt.** It is ranked the third most vulnerable country in the world to disasters, which are only exacerbated by climate change.¹ Cyclones are expected to be more intense with increasing temperatures. Sea level rise for Tonga is expected to reach 11 to 51 cm by 2050.
- 2. Tonga has shown a laudable commitment to recovery from the Hunga Tonga-Hunga Ha'apai eruption and ensuring tsunami,** as well as concurrent crises like the onset of Coronavirus, the influx of waste, and the rebuilding of government institutions and services.
- 3. Tonga's continued commitment to and implementation of the Convention on Biological Diversity is commendable, especially considering their in-depth sixth national report.**² Biodiversity is critical to maintaining Tonga's varied ecosystems, which in turn are the bedrock of Tongans' food, water, and health.

¹ World Risk Report 2021. Bündnis Entwicklung Hilft, Ruhr University Bochum – Institute for International Law of Peace and Conflict, 2021. Accessed at <https://repository.gheli.harvard.edu/repository/10930/>.

² Kingdom of Tonga's Sixth National Report to the Convention on Biological Diversity.



4. **Tonga should examine how it can better preserve, protect, and defend the human rights of marginalized persons in the context of the government’s response to climate change.** Women, LGBTQ+ persons, and disabled persons face threats to their rights to life, healthcare, and economic development.

II. Climate Change

A. Impacts of Climate Change

5. **Tonga is vulnerable to sea level rise (SLR).** SLR is expected to reach 11 to 51 cm by 2050.³ This will contribute to coastal flooding on several of Tonga’s islands and towns, in particular Tongatapu, and compounds problems related to storm surges. SLR will cause displacement of peoples and reduce the lands available for agriculture and forest. Saltwater intrusion will compromise fresh groundwater supply, exacerbating water scarcity.

6. **Climate change is projected to cause higher intensity storms.** Tonga, being in the tropics, is subject to periodic cyclones. Cyclones are projected to increase in intensity, although the frequency of cyclones is not expected to change.⁴ This will increase morbidity and mortality, displace people, and damage infrastructure, agriculture, and natural resources including forests and reefs—impacting the rights to health, life, an adequate standard of living, and the right to a clean, healthy and sustainable environment.

7. **Tonga is susceptible to increased temperatures, which will cause additional health issues.** Increased heat is associated with an increase in food- and water-borne diseases, diseases contracted from livestock, asthma, increased harmful algae blooms, and increased cardiovascular and respiratory distress.⁵ Ecosystem damage includes increased and more intense coral bleaching events and longer return times, related to the El Niño Southern Oscillation.

B. Actions to Mitigate Climate Change

8. **Tonga’s Second Nationally Determined Contribution (NDC) under the Paris Climate Agreement** has the goal of achieving 70% of energy generated by renewables by 2030, as well as an establishment of a forest inventory, and expansion of Marine Protected Areas Special Management Areas, among other commendable climate-based goals.⁶ The government is encouraged to implement these goals, especially considering setbacks following the Hunga Tonga-Hunga Ha’apai eruption and tsunami.

³ Third National Communication on Climate Change Report (2019). Accessed at https://unfccc.int/sites/default/files/resource/Final%20TNC%20Report_December%202019.pdf.

⁴ IPCC AR6 WGI Summary for Policy Makers, A.3.4.

⁵ IPCC AR6 WGII B.1.4.

⁶ Tonga’s Second Nationally Determined Contribution, accessed at <https://unfccc.int/NDCREG>.



9. **Tonga passed the Climate Change Fund Bill 2021**, which promises funding for projects that improve resiliency and adaptation to climate change.⁷

10. **Tonga should consider joining Vanuatu, the Maldives, and Belgium in calling for the UN to add ecocide to the Rome Statute of the International Criminal Court.** This will make it a crime to knowingly destroy or commit long-term damage to the environment. It may give Tonga a legal cause of action against third parties that are exploiting Tonga's natural resources and ecosystems, either directly or indirectly, or which are placing costly climate impacts on Tonga. Ecocide in Tonga, particularly through climate change impacts, affects the right to life and the right to self-determination (among many other rights) of the Tongan people.

11. **Along with Vanuatu, Tonga should consider supporting and/or joining the Fossil Fuel Non-Proliferation Treaty.**

III. Gender Equality

12. **Due to gender inequalities, women are more likely than men to suffer risk and loss from disasters, including death, disease, violence, and gender-based violence.** For the same reasons, they are less able to adapt to climate change. These issues limit women's core human rights and run counter to international human rights obligations that promote and protect gender equity, or which call for the elimination of discrimination and gender-based violence.⁸

13. **Tonga should ratify the Convention on the Elimination of All Forms of Discrimination against Women.** Empowering women will not only improve women's rights and equality in Tonga, but it will also make all Tongans more resilient and responsive to disasters.

14. **Tonga should eliminate discrimination against women in legislation, policies, programs, and planning related to disaster risk reduction and climate change.** Tonga should address discriminatory land tenancy and access, remove barriers to women's autonomy in freedom of movement, and promote equal access to economic, social, and cultural rights. Disaster risk reduction measures and policies should incorporate effective mechanisms to guarantee the rights of women and girls.

15. **Tonga should work towards gender parity in decision-making and development planning relating to disaster risk reduction and climate change.** Tonga can do this by adopting targeted policies, strengthening national institutions concerned with gender-related issues, and providing adequate resources to developing women's leadership capacity.

16. **Tonga should increase accountability and women's access to justice.** Tonga can do this by studying the impact of current laws on women, increasing awareness of legal remedies, ensuring affordability of legal services, and bringing justice mechanisms in line with the

⁷ Tonga Parliament, "Parliament passes Tonga Climate Change Fund Bill 2021," 2021. Accessed at <https://parliament.gov.to/media-centre/latest-news/latest-news-in-english/838-parliament-passes-tonga-climate-change-fund-bill-2021>.

⁸ Committee on the Elimination of Discrimination Against Women General recommendation no. 37 (2018).



Convention on the Elimination of Discrimination against Women. This baseline legal infrastructure can improve women's lives and the resiliency of the women's rights, particularly in the face of climate change and disasters.

17. **Tonga should limit the disproportionate harms women suffer after disasters.** Tonga should ensure that early warning systems are accessible to diverse groups of women, develop response plans that provide reporting mechanisms after disasters, and train authorities, emergency services workers on addressing and preventing the kinds of gender-based violence that occur during and after disaster.

18. **Tonga should decriminalize abortions.** Criminalizing abortions abridges women's rights to life, privacy, and non-discrimination, among other rights.⁹ Tonga should make safe abortion available to all Tongans who want one.

IV. LGBTQ+ rights

19. **Homosexual, bisexual, Leitis, and transgender people are not afforded equal rights as heterosexual and cisgendered people.** Sodomy is criminalized in Tonga,¹⁰ and cross-dressing is illegal.¹¹ These people are often stigmatized by the wider community and do not receive legal protection or equal access to rights.

20. **To ensure LGBTQ+ and Leitis Tongans' right to life, health, and engagement in self-determination, their rights should be recognized, and existence decriminalized.** Non-cisgendered and non-heterosexual people are often last to receive public resources and opportunities, and globally are more likely to live in poverty, be homeless, and lack access to healthcare.¹² These concurrent issues are exacerbated by the effects of climate change.

V. Disability Rights

21. **A significant portion of Tonga's population is disabled.** 43% of the population has "some difficulty" performing certain basic tasks like walking, hearing, and seeing, 7.6% have "a lot of difficulty," and 2.3% are unable to perform those tasks at all.¹³

22. **We recognize and applaud the steps taken by Tonga to address the rights of disabled people.** In 2015 Tonga launched the Division of Social Protection and Disability, which aims to promote sustainable, inclusive policies, services, and protections for disabled people. They also codified disabled children's right to education in the 2013 Education Act.

⁹ OHCHR, *Informational Series: Sexual and Reproductive Health and Rights*, "Abortion," 2020. Accessed at: <https://www.ohchr.org/en/women/information-series-sexual-and-reproductive-health-and-rights>.

¹⁰ Tonga Criminal Offenses Act §136.

¹¹ ABC.net.au, "Leitis: Tonga's transgender community fights for visibility from the conservative Pacific Kingdom," 2018. Accessed at abc.net.au/news/2018-04-16/tongan-leitis-hope-for-greater-visibility-with-new-documentary/9653964.

¹² Oosterhoff, P et al., "Literature Review on Sexuality and Poverty," Institute of Development Studies, 2014.

¹³ UNICEF Tonga Disability Survey 2018. Accessed at unicef.org/pacificislands/reports/tonga-disability-survey-report-2018.



23. **Tonga has yet to address all of disabled people’s needs.** This includes ensuring their rights to housing, employment opportunity, health care, transportation, and accessibility. Improvements at all levels of governance are necessary to ensure the rights of disabled people.¹⁴ In addition, access to education is not yet equitable.

24. **People with disabilities are disproportionately vulnerable to the effects of climate change.** During extreme weather events, disabled people are more likely to suffer morbidity and mortality. They are less able to adapt to expected changes like increased heat, limited water access, and migration.¹⁵

25. **Tonga should put in place measures to provide persons with disabilities the resources they need to adapt to climate change.** This includes accessible and adequately responsive emergency services, early-warning systems that reach disabled people, adequate healthcare, and access to justice due to increased rates of violence and sexual violence during emergencies.

26. **Tonga has signed but not ratified the UN Convention on the Rights of Persons with Disabilities.** Tonga should consider ratifying the convention.

VI. Property Law

27. **Tonga’s unique property system intends to provide housing for all Tongans.** This system, where any male Tongan over 16 years old can apply for and receive an allotment from the residing Noble for free, is commendable in its goal of economic equality and towards housing as a human right.

28. **The land system does not account for climate change.** Climate change will have an outsized effect on the viability of land, be it through sea level rise, saltwater intrusion, and increased risk to damage from tropical storms. This will cause increased internal migration, which the Tongan property system is not currently equipped to handle.

29. **The land system does not provide gender equality.** The land system violates notions of gender equality and women’s capacity for economic development and autonomy. This also can exacerbate domestic violence, child marriages, and trafficking in conjunction with climate change, as women have fewer independent avenues to secure property in the case of disaster.

30. **We recommend that Tonga reform the property system to promote gender equity and allow for faster adaptation to climate change through migration.** This will make Tongans less vulnerable while maintaining the country’s goal of universal housing and keeping Tongan property in Tongan hands.

¹⁴ *Id.*

¹⁵ Human Rights Council, “Analytical study on the promotion and protection of the rights of persons with disabilities in the context of climate change,” A/HRC/44/30, 2020. Accessed at [ohchr.org/en/disabilities/reports](https://www.ohchr.org/en/disabilities/reports).



VII. Democracy and Freedom

31. **Tonga has shown improvement with an increase of 4 points in its Global Freedom Score from 74 to 79.** This is due to improvements in education, freedom of expression, and workers' rights. There is still significant room to improve in that front.
32. **Tonga has maintained free and fair elections, however, corruption remains an issue.** Tonga's 1-house parliament consists of 17 commoner-elected ministers and 9 noble-elected ministers. The elections appear to be free and fair, and diverse political affiliations are allowed. However, corruption is not uncommon, and anti-corruption mechanisms are weak.¹⁶
33. **The media is not fully free and independent.** While the constitution protects freedom of press, in practice the press is influenced by politicians and the Ministry of Communications. The King has also historically supported media censorship.¹⁷

VIII. Waste Management

34. **Tonga has been expanding their waste collection and management capacity over the past several years.** The opening of new landfills and incinerators have also helped curb pollution, especially in regions outside Tongatapu like Ha'apai and Vava'u.¹⁸ The recent expansion to recyclables on Tongatapu is also commendable.¹⁹ These efforts help to preserve the right to a clean, healthy and sustainable environment in Tonga.
35. **Nonetheless, illegal dumping and pollution is still prevalent, which causes harm to the mangrove, land, and reef environments in Tonga.** This compromises Tongans' right to a clean, healthy and sustainable environment, right to food, right to clean water, and ultimately, the right to life. Contributing factors to pollution may include: limited access to waste management programs, the flat-rate fee system, education, improved fishery management, and lack of sustainable products.
36. **Expanding waste management services to small communities is necessary, along with periodic cleanups.** Small communities, especially on remote islands, do not have access to waste management.
37. **The flat-rate service fee may be too expensive for some Tongans.** A progressive fee, based on household income, business profits, etc., may increase enrollment in waste pickup.

¹⁶ Freedom House, *Freedom in the World 2021*. Accessed at <https://freedomhouse.org/country/tonga/freedom-world/2021>.

¹⁷ *Id.*

¹⁸ Matangi Tonga, "Three new waste vehicles for Ha'apai," 2021. Accessed at <https://matangitonga.to/2021/09/08/three-new-waste-vehicles-ha-apai>.

¹⁹ Matangi Tonga, "Tonga starts recycling plastic and glass", 2022. Accessed at <https://matangitonga.to/2022/04/28/tonga-starts-recycling-plastic-and-glass>.



38. **Outreach and education to Tongans on the importance of curbing pollution and illegal dumping and promoting proper waste disposal is crucial.** Creating a collective sense of responsibility and community around the effects of pollution and the benefits of proper disposal can help curb illegal dumping.
39. **Improved management of waste generated by fishing boats is crucial to reducing ocean pollution.** Due to the limited oversight and direct impact that fishing boats can cause on the ocean, this source of pollution should be curbed. Waste from the fishing industry is routinely dumped directly into the ocean worldwide, accounting for a substantial portion of marine litter.²⁰ Improved management of this waste stream can reduce the polluting impacts of this crucial industry.
40. **Sustainable products that reduce waste or decompose without harmful byproducts can also limit the amount of waste that needs disposing, extending the life of landfills.**

Recommendations

41. **Join international conventions on human rights to increase accountability and global engagement.** This includes, but is not limited to, the Convention on the Elimination of All Forms of Discrimination against Women, the International Covenant on Economic, Social and Cultural Rights, and the Covenant on Civil and Political Rights. These will serve as mechanisms to protect Tongan's human rights, while improving the Tongan government's position on the world stage.
42. **Improve disaster and climate preparation, warning, and response that is inclusive of all vulnerable peoples.** This will make communities more resilient, and give women, LGBTQ+, Leitis, and disabled people more of a chance to prepare for disasters. This will also limit violence against these groups after disasters occur.
43. **Join international efforts to push larger countries to reduce their emissions and meet their NDCs.** We commend Tonga as a Small Island Developing State for its ambitious goals and enacted policies to meet its Nationally Determined Contribution, despite the hardships from the eruption. Tonga can use this position of climate engagement to pressure and shame more developed and higher-emitting nations into paying reparations and meeting their own NDCs.

Acknowledgements

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²⁰ G. Macfadyen, T. Huntington, R. Cappell, Abandoned, lost or otherwise discarded fishing gear. UNEP Regional Seas Reports and Studies No. 185. FAO Fisheries and Aquaculture Technical Paper, No. 523. Rome, UNEP/FAO, 2009.



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