

SAMOA 2012 HUMAN RIGHTS REPORT

EXECUTIVE SUMMARY

Samoa is a constitutional parliamentary democracy that incorporates traditional practices into its governmental system. In July parliament reelected Head of State Tui Atua Tupua Tamasese Efi. The unicameral parliament, elected by universal suffrage, includes the heads of extended families (matai). Charges of campaign bribery marred the March 2011 parliamentary elections. Security forces reported to civilian authorities.

The principal human rights problems were poor prison conditions and domestic violence against women.

Other human rights problems included police abuse, accountability of and adherence to the rule of law by village “fonos” (councils of matai), abuse of children, and discrimination against women and non-matai.

The government took steps to prosecute officials who committed abuses. There were no cases of reported impunity.

Section 1. Respect for the Integrity of the Person, Including Freedom from:

a. Arbitrary or Unlawful Deprivation of Life

There were no reports that the government or its agents committed arbitrary or unlawful killings.

b. Disappearance

There were no reports of politically motivated disappearances.

c. Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment

The constitution prohibits such practices, and the government generally observed these prohibitions in practice. However, there were some allegations of police abuses. In September an anonymous letter addressed to the prime minister and also sent to the media accused the police force of widespread wrongdoing and corruption. Later in the month the police’s Professional Standards Unit (PSU)

began an investigation into the allegations made in the letter. At year's end the attorney general extended the investigation to gather further evidence.

Prison and Detention Center Conditions

Prison conditions overall remained below international standards.

Physical Conditions: There were approximately 430 inmates in the prison system, including 23 women and 37 juveniles. The Tafaigata men's prison, the country's most crowded, had 23 cells of various sizes, including eight-century-old concrete cells that measured approximately 30 feet by 30 feet and held 26 to 30 inmates each. Only basic provisions were made with respect to food, water (including potable water), and sanitation. Cell lighting and ventilation remained poor; lights remained on only from dusk until 9 p.m. Each cell had one toilet and one shower facility, which were shared communally.

Several prisoners who escaped from Tafaigata Prison on separate occasions during the year stated they were motivated to escape to voice complaints to government officials and the press about living conditions and mistreatment by prison guards and police. For example, in September a 23-year-old prisoner escaped from the prison and claimed to the media that prison guards had beaten him. At year's end his complaint had not been investigated.

The separate Tafaigata women's prison had five cells that were approximately 15 feet by nine feet, and each held four to six inmates. There was also one separate holding cell for female inmates awaiting trial and one security cell. Physical conditions, including ventilation and sanitation, generally were better in the women's prison than in the men's prison.

Juveniles (under 21 years of age) were housed at the Olomanu Juvenile Center, where physical conditions generally were better than in adult facilities. The 37 juveniles were housed in three separate homes and lived as a community in a 300-acre compound.

Overnight detainees were held at two holding cells at police headquarters in Apia and one cell at Tuasivi. The cells had good lighting, sanitation, and ventilation.

Administration: Files on prisoners were kept by police and typically covered problems regarding sentencing and parole. Courts regularly used community

service hours and suspended sentences as alternatives to sentencing for nonviolent offenders.

The Office of the Ombudsman is legally mandated to receive and investigate complaints of prisoners and detainees on problems of inhumane overcrowding; status and circumstances of juvenile offenders; and improvement of pretrial detention, bail, and recordkeeping procedures. Prisoners also could lodge complaints with the police department's PSU.

Officials permitted prisoners escorted hospital visits for medical checks as necessary. A room at the police officers' headquarters served as a medical clinic, but no doctor or nurse was assigned to the facility.

Prisoners at all facilities, including the juvenile facility, are required to do manual labor approximately 40 hours per week. Prisoners generally performed agricultural work and cooked to provide food for the inmates and prison staff.

The government permitted family members and church representatives to visit prisons weekly. This was often on Sundays, when families could bring food and clothing for inmates.

Authorities permitted prisoners and detainees religious observance and allowed them to submit complaints to judicial authorities and request investigation of allegations of inhumane conditions. Authorities investigated such allegations and documented the results in a publicly accessible manner. In general, the government investigated and monitored prison and detention center conditions.

Monitoring: The government permitted monitoring visits by independent human rights observers, including the Red Cross and other diplomatic missions.

d. Arbitrary Arrest or Detention

The constitution prohibits arbitrary arrest and detention, and the government generally observed these prohibitions.

Role of the Police and Security Apparatus

The national Samoan Police Force (SPF) maintains internal security. Local councils enforce rules and security within individual villages. Civilian authorities maintained effective control over the SPF, and the government has effective

mechanisms to investigate and punish abuse and corruption. There were no reports of impunity involving the SPF during the year. A lack of resources and capacity-building efforts limited police effectiveness.

Arrest Procedures and Treatment While in Detention

The Supreme Court issues arrest warrants based on compelling evidence. The law provides for the right to a prompt judicial determination regarding the legality of detention, and authorities generally respected this right in practice. Officials inform detainees within 24 hours of the charges against them, or they are released. There is a functioning bail system. The government allows detainees prompt access to a lawyer of their choice, or the government provides a lawyer for indigent detainees upon request at court.

Pretrial Detention: Due to staff shortages, some Supreme Court and district court judges faced a backlog of pending cases. Pretrial detainees at the Tafaigata compound were on average detained for six months or more.

e. Denial of Fair Public Trial

The constitution provides for an independent judiciary, and the government generally respected judicial independence in practice.

Trial Procedures

The constitution provides for the right to a fair trial, and an independent judiciary generally enforced this right. A trial judge examines evidence and determines if there are grounds to proceed. Defendants have the presumption of innocence and by law cannot be compelled to testify or confess guilt. Trials are public except for trials of juveniles, which only immediate family members may attend. Juries (also known as assessors) are used only for the most serious offenses, such as murder, manslaughter, and rape. Defendants have the right to be present; to timely consultation with an attorney; to be informed promptly and in detail of the charges, to include interpretation services; and to adequate time and facilities to prepare a defense. Defendants may confront witnesses, present witnesses and evidence on their own behalf, access government-held evidence, and appeal a verdict.

Village councils handled many civil and criminal matters, but the councils varied considerably in decision-making styles and the number of matai involved in the decisions. The law recognizes the decisions of the local council and provides for

limited appeal to the Lands and Titles Court and the Supreme Court. The nature and severity of the dispute determine which court receives an appeal. A further appeal may be made to the Court of Appeal. The Supreme Court has ruled that the local councils may not infringe upon villagers' freedom of religion, speech, assembly, or association.

During the year the government continued a review of the Village Fono Act to determine whether the act gives the local councils excessive authority to limit individual rights under a broadly defined "public order" exception. In June the country's Law Reform Commission submitted a report to the parliament regarding the act. The commission stated that in its judgment the act does not violate the constitution. The commission recommended, however, amending the act to allow greater consideration for religious freedom principles in the decision-making capacity of the local councils.

Political Prisoners and Detainees

There were no reports of political prisoners or detainees.

Civil Judicial Procedures and Remedies

There is an independent and impartial judiciary in civil matters, including access to a court to bring lawsuits seeking damages for, or cessation of, human rights violations.

f. Arbitrary Interference with Privacy, Family, Home, or Correspondence

The laws prohibit such actions, and the government generally respected these prohibitions in practice. However, there was little privacy in villages, where there could be substantial societal pressure on residents to grant village officials access without a warrant. There were reports of some village councils banishing individuals or families from villages (see section 2.d.).

Section 2. Respect for Civil Liberties, Including:

a. Freedom of Speech and Press

The law provides for freedom of speech and press, and the government generally respected these rights in practice. An independent press, an effective judiciary, and a functioning democratic political system combined to ensure freedom of speech

and press. The law stipulates imprisonment for any journalist who, despite a court order, refuses to reveal a confidential source upon request from a member of the public. However, there was no court case invoking this law.

In 2011 the government ordered the Law Reform Commission to examine the need for a body to regulate the media and to make recommendations for the establishment of such a body. The Commission submitted a final report from this inquiry to the prime minister in June. The report recommended setting up a media body made up of representatives from media organizations and the public to regulate the media.

Internet Freedom

There were no government restrictions on access to the Internet or credible reports that the government monitored e-mail or Internet chat rooms without appropriate legal authority. Individuals and groups could engage in the expression of views via the Internet, including by e-mail. Internet access was readily available in and around Apia and throughout most of the country via cellular technology. Cost of access limited Internet activity for much of the population.

Academic Freedom and Cultural Events

The government generally did not restrict academic freedom or cultural events.

b. Freedom of Peaceful Assembly and Association

The constitution provides for freedom of assembly and association, and the government generally respected these rights in practice.

c. Freedom of Religion

See the Department of State's *International Religious Freedom Report* at www.state.gov/j/drl/irf/rpt.

d. Freedom of Movement, Internally Displaced Persons, Protection of Refugees, and Stateless Persons

The constitution provides for freedom of internal movement, foreign travel, emigration, and repatriation, and the government generally respected these rights in practice. However, traditional law governs villages, and village councils

regularly banned citizens from village activities or banished citizens from the village for failing to conform to village laws or obey local council rulings. Cases of village banishment were rarely made public. Of those cases that became known during the year, reasons for banishment included murder, rape, adultery, and unauthorized claims to land and matai title. There were reports of villages banning religious activities of villagers who do not belong to the “designated” village faith. In some cases civil courts overruled banishment orders, and some village councils reportedly refused to observe those orders. Some banished persons were accepted back into the village after performing a traditional apology ceremony.

Protection of Refugees

Access to Asylum: The country’s laws provide for the granting of refugee status, but the government has not established a system for providing protection to refugees. No such requests arose during the year.

Section 3. Respect for Political Rights: The Right of Citizens to Change Their Government

The constitution provides citizens the right to change their government peacefully, and citizens exercised this right in practice through periodic, free, and generally fair elections based on universal suffrage.

Elections and Political Participation

Political Parties: While the constitution gives all citizens above age 21 the right to vote and run for office, by social custom candidates for 47 of the 49 seats in parliament are drawn from the approximately 17,000 leaders of extended families, who are selected by family agreement. Although both men and women may become family leaders, only 10.5 percent were women. Matai control local governments through the village councils, and their titles are determined by appointment rather than direct election.

Participation of Women and Minorities: Despite various government, nongovernmental organization (NGO), and political party initiatives to increase female candidate participation in the general elections, only two women were elected to the 49-member parliament: One was named minister of justice and the other associate minister of women, community, and social development. One woman served as head of a constitutional office, one woman as governor of the

central bank, five women as chief executive officers of government ministries, and six women as general managers of government corporations.

The political rights of citizens who are not of ethnic Samoan heritage are addressed by reserving two parliamentary seats for at-large members of parliament, known as “individual voters” seats. One at-large cabinet minister and parliamentarian was of mixed European-Samoan heritage. Citizens of mixed European-Samoan or Chinese-Samoan heritage were well represented in the civil service.

Section 4. Corruption and Lack of Transparency in Government

The law provides criminal penalties for official corruption, and the government generally implemented the law effectively. Penalties ranged from several months to several years of imprisonment if convicted. There were isolated reports of government corruption during the year.

Although public officials were not subject to financial disclosure laws, codes of ethics applicable to boards of directors of government-owned corporations encouraged such disclosure. The law provides for an ombudsman to investigate complaints against government agencies, officials, or employees, including allegations of corruption. The ombudsman may require the government to provide information relating to a complaint.

By law government information is subject to disclosure in civil proceedings, unless the information is considered privileged or its disclosure would harm the public interest. In the case of other information requests, petitioners had to navigate a cumbersome bureaucratic process, and consequently information was not always obtainable in a timely manner.

Section 5. Governmental Attitude Regarding International and Nongovernmental Investigation of Alleged Violations of Human Rights

A number of domestic and international human rights groups generally operated without government restriction, investigating and publishing their findings on human rights cases. Government officials were cooperative and responsive to their views.

Government Human Rights Bodies: The Office of the Ombudsman was generally considered effective and operated free from government or political party interference. The government usually adopted its recommendations.

Section 6. Discrimination, Societal Abuses, and Trafficking in Persons

The constitution prohibits discrimination based on race, gender, disability, language, or social status, and the government generally respected these provisions in practice. The constitution does not address sexual orientation or gender identity. In practice the society publicly recognizes the transgender Fa'afafine community, although members of the community reported instances of social discrimination. Politics and culture generally reflected a heritage of matai privilege and power, and members of certain families of high traditional status possessed some advantages.

Women

Rape and Domestic Violence: Rape is illegal, but there is no legal provision against spousal rape. The penalties for rape range from two years' to life imprisonment, but a life sentence has never been imposed. Many cases of rape went unreported because societal attitudes discouraged such reporting. In recent years, however, authorities noted a rise in the number of reported cases of rape. This appeared to be a result of efforts by government ministries and local NGOs to increase awareness of the problem and the need to report rape cases to police. The courts treated rape seriously, and the conviction rate was generally high.

The constitution prohibits abuse of women, but societal attitudes tolerated their physical abuse within the home. Social pressure and fear of reprisal typically caused such abuse, though common, to go unreported. Village councils typically punished domestic violence offenders, but only if the abuse was considered extreme (that is, visible signs of physical abuse). Village religious leaders are also permitted to intervene in domestic disputes. When police received complaints from abused women, the government investigated and punished the offender, including by imprisonment. Domestic violence is charged as common criminal assault, with penalties ranging from several months to one year in prison. The government did not keep statistics specifically on domestic abuse but acknowledged the problem as one of considerable concern. The Ministry of Police and Prisons had a nine-person Domestic Violence Unit, which worked in collaboration with NGOs that combated domestic abuse. NGO services for abused women included public antiviolence awareness programs, confidential hotlines, in-person counseling and other support, and shelters.

Sexual Harassment: No law specifically prohibits sexual harassment, and there were no reliable statistics concerning its extent. The lack of legislation and a

cultural constraint against publicly shaming or accusing someone, even if justifiable, likely caused it to be underreported. Victims had little incentive to report instances of sexual harassment, since they could jeopardize their career or family name by going forward with such complaints.

Reproductive Rights: Couples and individuals have the right to decide freely and responsibly the number, spacing, and timing of their children and to have the information and means to do so free from discrimination. The National Health Service, private hospitals, the Ministry of Health's public awareness programs, general practitioners, and various health care centers provided information and access to contraception and access to maternal health services, which included skilled attendance during childbirth, prenatal care, and essential obstetric and postpartum care.

Discrimination: Women have equal rights under the constitution and statutory law, and the traditionally subordinate role of women was changing, albeit slowly, particularly within the more conservative segments of society. The Ministry of Women, Community, and Social Development oversees and helps secure the rights of women. To integrate women into the economic mainstream, the government sponsored numerous programs, including literacy and training programs for those who did not complete high school.

The law prohibits employment of women between midnight and 6 a.m. unless the commissioner of labor grants special permission. Citizens generally observed this regulation.

Children

Birth Registration: Citizenship is derived by birth in the country if at least one parent is a citizen; the government may also grant citizenship by birth to a child born in the country if the child would otherwise be stateless. Citizenship also is derived by birth abroad to a citizen parent who either was born in the country or resided there at least three years. Births were not always registered immediately, and some were not registered for many years. Legally children without a birth certificate are not allowed to attend primary schools, but this was not strictly enforced.

Child Abuse: Law and tradition prohibit the severe abuse of children, but both tolerate corporal punishment. Although no official statistics were available, press reports indicated a rise in reported cases of child abuse, especially incest and

indecent assault cases, which appeared to be due to citizens' increased awareness of the need to report physical, emotional, and sexual abuse of children. The government aggressively prosecuted such cases.

In March an eight-year-old girl died only three days after a beating with a stick by a female teacher at her primary school. The teacher appeared before the District Court in March, pled guilty to assault in April, and received a suspended 12-month sentence in June. The beating was determined not to be the cause of death. The teacher resumed working in June.

Child Marriage: The minimum age of marriage for a man is 18 and for a woman 16. Consent of at least one parent or guardian is necessary for a man age 21 or a woman under age 19. Early marriage does not generally occur.

Sexual Exploitation of Children: The minimum age for consensual sex is 16 years; the maximum penalty for violators is seven years' imprisonment. There is no specific criminal provision regarding child pornography; however, child pornography cases can be prosecuted under a provision of law that prohibits distribution or exhibition of indecent material. The maximum penalty is imprisonment for two years.

The Ministry of Justice and Courts Administration and the Ministry of Education, in collaboration with NGOs, carried out educational activities to address domestic violence and inappropriate behavior between adults and children and promote human rights awareness. Sexual abuse of children remained a problem.

International Child Abductions: The country is not a party to the 1980 Hague Convention on the Civil Aspects of International Child Abduction.

Anti-Semitism

The country had no organized Jewish community, and there were no reports of anti-Semitic acts.

Trafficking in Persons

There were no confirmed reports of human trafficking during the year.

Persons with Disabilities

There is no law pertaining specifically to the status of persons with disabilities or regarding accessibility for them. Tradition dictates that families care for persons with disabilities, and this custom was observed widely in practice.

The death of a mentally ill man in Tafaigata Prison on December 26 raised concerns about the treatment of mentally ill patients while in police custody. The man was initially transported to the National Hospital for treatment but was subsequently transferred to police custody because of his erratic and violent behavior and held in a jail cell, where he was later found dead. The investigation into the cause of his death continued at year's end.

Some children with disabilities attended regular public schools while others attended one of three schools designed specifically to educate disabled students. Many public buildings were old, and only a few were accessible to persons with disabilities. Most new buildings provided better access, including ramps and elevators in most multistory buildings.

The Ministry of Women, Community, and Social Development has responsibility for protecting the rights of persons with disabilities.

Societal Abuses, Discrimination, and Acts of Violence Based on Sexual Orientation and Gender Identity

“Sodomy” and “indecent between males” are illegal, with maximum penalties of seven and five years' imprisonment, respectively. However, these provisions were not actively enforced with regard to consensual same-sex sexual relations between adults. Although there were no reports of societal violence based on sexual orientation or gender identity, there were isolated cases of discrimination.

Other Societal Violence or Discrimination

There were no reports of societal violence or discrimination against persons with HIV/AIDS.

Section 7. Worker Rights

a. Freedom of Association and the Right to Collective Bargaining

The law, including related regulations and statutory instruments, protects the rights of workers to form and join independent unions, to conduct legal strikes, and to

bargain collectively. However, there are certain restrictions on the right to strike for government workers, imposed principally for reasons of public safety.

Workers legally have unrestricted rights to establish and join organizations of their own choosing.

The law provides government workers the right to strike, subject to certain restrictions, and workers exercised this right in practice. Although workers in the private sector have the right to strike, there were no private-sector strikes during the year.

The government effectively enforced applicable laws, and in practice freedom of association was respected. The Public Service Association functioned as a union for all government workers, who made up approximately 8,000 of the approximately 25,000 workers in the formal economy. Unions generally conducted their activities free from government interference.

Workers exercised the right to organize and bargain collectively in practice. The Public Service Association engaged in collective bargaining on behalf of government workers, including bargaining on wages. Arbitration and mediation procedures are in place to resolve labor disputes, although such disputes rarely arose.

There were no known instances of antiunion discrimination during the year.

b. Prohibition of Forced or Compulsory Labor

The law prohibits forced or compulsory labor, and the government generally enforced laws in this regard. There is an exception in the constitution for service required by Samoan custom. A key feature of the matai system is that nonmatai men perform work within their village in service to their families and the village as a whole. Most persons did so willingly; however, the matai may compel those who do not.

c. Prohibition of Child Labor and Minimum Age for Employment

The law prohibits employing children under age 15 except in “safe and light work.” The law does not apply to service rendered to family members or the matai, some of whom required children to work for the village, primarily on village farms. The law prohibits any student from being engaged in light or heavy

industrial activity within school hours of 8 a.m. to 2 p.m. The law, however, does not ban vending by children under age 14. The law prohibits children under age 15 from work that could harm their physical or moral health.

The Ministry of Commerce, Industry, and Labor refers complaints of illegal child labor to the attorney general for enforcement, but no cases were prosecuted during the year.

There were no reliable statistics available on the extent of child labor. Children frequently were seen vending goods and food on Apia street corners. The government has not definitively determined whether this practice violates the country's labor laws, which cover only persons who have a place of employment. Although the practice may constitute a violation of the law, local officials mostly tolerated it. The extent to which children were required to work on village farms varied by village, although anecdotal accounts indicated the practice was quite prevalent. Younger children primarily worked doing household chores, yard work, and light work gathering fruits, nuts, and plants. Some boys began working on plantations as teenagers, helping to gather crops such as coconuts and caring for animals. Some children reportedly were employed in domestic service.

Also see the Department of Labor's *Findings on the Worst Forms of Child Labor* at www.dol.gov/ilab/programs/ocft/tda.htm.

d. Acceptable Conditions of Work

There were two minimum wages: WST \$2.00 (\$0.89) per hour for the private sector, and WST \$2.65 (\$1.18) for the public sector. Approximately three-quarters of the working population worked within the subsistence economy and had no formal employment. The Bureau of Statistics 2008 Poverty Report placed the national average of the basic needs poverty line at WST \$54 (\$24) per person per week or WST \$494 (\$220) per household per week.

The provisions of the Labor Act cover only the private sector; a separate law, the Public Service Act, covers public sector workers. The laws stipulate a standard workweek of no more than 40 hours, or eight hours per day (excluding mealtimes), and prohibit compulsory overtime. For the private sector, overtime pay is specified at time and a half, with double time for work on Sundays and public holidays and triple time for overtime on such days. For the public sector, there is no paid overtime, but compensatory time off is given for overtime work. There generally are nine paid public holidays per year.

The law establishes certain rudimentary safety and health standards for workplaces, which the Ministry of Commerce, Industry, and Labor is responsible for enforcing. The Ministry of Commerce, Industry, and Labor had 11 labor inspectors. The law also covers persons who are not workers but who are lawfully on the premises or within the workplace during work hours. Safety laws do not generally apply to agricultural service rendered to the matai or to work done within individual family homes.

Independent observers reported that safety laws were not enforced strictly, except when accidents highlighted noncompliance. Work accidents were investigated when reports were received. There were 105 workplace injuries and three deaths during the year. Many agricultural workers, among others, were inadequately protected from pesticides and other dangers to health. Government education and awareness programs addressed these concerns by providing appropriate training and equipment to some agricultural workers.

The commissioner of labor investigates reported cases of hazardous workplaces. Information was not available on specific government investigations during the year. Government employees are covered under different and more stringent regulations, which were enforced adequately by the Public Service Commission.