

TONGA 2012 HUMAN RIGHTS REPORT

EXECUTIVE SUMMARY

The Kingdom of Tonga is a constitutional monarchy. In March, King Siaosi (George) Tupou V died and his brother, King Siaosi Tupou VI, replaced him. Political life is dominated by the king, popularly elected parliamentary leaders, the nobility and their representatives, prominent commoners, and democratic reform figures. The most recent parliamentary elections, held in November 2010, were deemed generally free and fair, and in December 2010 parliament elected a nobles' representative, Lord Tu'ivakano, as prime minister. Security forces reported to civilian authorities.

Domestic violence, discrimination against women, and government corruption were the most prevalent human rights problems.

The privileged status enjoyed by the royal family and nobility contributed to a lack of government transparency and socioeconomic mobility.

The government took steps to prosecute officials who committed abuses.

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

a. Arbitrary or Unlawful Deprivation of Life

In August police allegedly assaulted a New Zealand citizen of Tongan descent in his cell; the man, detained for drunkenness, subsequently died. Five police officers were charged and awaiting trial in the case at year's end. Authorities charged three off-duty police officers with manslaughter in the November death of a foreign citizen. The case had not begun at year's end.

b. Disappearance

There were no reports of politically motivated disappearances.

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

The law prohibits such practices, but during the year there were eight complaints against police officers for violence. At year's end the trial of the accused officers

was pending in three cases, three additional cases were under investigation, one case was referred to the Police Employment Committee for disciplinary action, and one case was closed after the investigation determined it was based on a misleading complaint.

Prison and Detention Center Conditions

Prison and detention center conditions generally met international standards. The government permitted monitoring visits by international human rights observers, but there were no such visits during the year.

Physical Conditions: At year's end the country's four prisons and other detention facilities held 158 inmates, including three women. There were no juveniles. The official prison capacity was 200. Pretrial detainees are held at police headquarters in Nuku'alofa. As of November there were eight pretrial detainees. During the year one death occurred in the pretrial detention center. Prisoners had access to potable water.

Administration: The country does not have an ombudsman who can serve on behalf of prisoners and detainees to consider such matters as alternatives to incarceration for nonviolent offenders, or overcrowding and the detention of juveniles, should those matters need to be addressed in the future, or improving pretrial detention, bail, and recordkeeping procedures to ensure that prisoners do not serve beyond the maximum sentence for the charged offense. Authorities maintained a tracking system to ensure that prisoners were not held beyond the maximum sentence for their offense. Prisoners had access to visitors and were permitted religious observance. Authorities permitted prisoners to submit complaints without censorship to the prison custodial division, which then forwarded them to the commissioner of prisons for review and action. Prisoners also are permitted to submit complaints to judicial authorities.

Monitoring: At least once every quarter, a group of three to five persons called "visiting officers," chosen by the cabinet and normally including a police magistrate, a physician, and a member of the clergy, visited the prisons to hear any prisoner complaints or grievances.

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 police, under the minister of police and prisons, maintain internal security. The Tonga Defense Services (TDS), under the minister of defense (a position held by the prime minister during the year), is responsible for external security. In emergency situations the TDS also shares domestic security duties with the police. The king is the commander in chief of the TDS. Civilian authorities maintained control over the TDS and police, and the government has effective mechanisms to investigate and punish security force abuse and corruption. There were no reports of impunity involving the security forces during the year. Complaints against police are referred to the Police Employment Committee, which determines the severity of the complaint and refers it to the Police Board. The committee may take disciplinary action against police officers, but refers serious breaches to the board. The board has the power to determine the action that should be taken in response to a serious breach of discipline, including dismissal from the force. Entry-level police training included training on corruption, ethics, transparency, and human rights.

Arrest Procedures and Treatment While in Detention

The law provides for the right to judicial determination of the legality of arrest, and this was observed in practice during the year. Under normal circumstances police have the right to arrest detainees without a warrant, but detainees must be brought before a local magistrate within 24 hours. In most cases magistrates set bail. The law permits unlimited access by counsel and family members to detained persons. Indigent persons could obtain legal assistance from the nongovernmental Community Law Center (CLC). However, the CLC did not have a dedicated source of funding during the year and depended on donations.

e. Denial of Fair Public Trial

The constitution provides for an independent judiciary, and the government generally respected judicial independence in practice, although the system was modified in 2010 to increase the king's judicial appointment power. The lord chancellor, appointed by the king, appoints judges and also has authority to investigate complaints against judges.

Trial Procedures

The constitution provides for the right to a fair trial, and an independent judiciary generally enforced this right. Although unavailability of judges, witnesses, or lawyers could delay cases, most cases were processed without undue delay. Trials are public, and defendants have the option to request a seven-member jury. Defendants are presumed innocent and cannot be compelled to testify or confess guilt. They are informed promptly and in detail of the charges against them, including free interpretation if necessary. They have access to government-held evidence and may present witnesses and evidence, confront witnesses against them, and appeal convictions. They have the right to be present at their trials, consult with an attorney in a timely manner, and be provided adequate time and facilities to prepare a defense. Public defenders are not provided, but the CLC provided free legal advice and representation in court. Local lawyers occasionally took pro bono cases.

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. Any violation of a human right provided for in the law can be addressed in the courts.

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

The constitution prohibits such actions, and the government generally respected these prohibitions in practice.

Section 2. Respect for Civil Liberties, Including:

a. Freedom of Speech and Press

The constitution provides for freedom of speech and press, but the government did not always respect these rights in practice. For example, in July Akilisi Pohiva, leader of the opposition Democratic Party of the Friendly Isles, claimed the state-run media outlets denied the party access so the party was unable to state publicly its case for a proposed no-confidence vote.

Freedom of Press: Media outlets reported on political developments and high-profile court cases but exercised self-censorship regarding high-profile individuals.

The board of the Tonga Broadcasting Commission (TBC), a government-owned company, directed that all TBC programming be reviewed by board-appointed censors prior to broadcast.

Parliamentary debates were made accessible to both private and publicly owned media. The debate minutes were available publicly online within days of the debates.

Libel Laws: Unlike in some previous years, there were no libel judgments against media organizations during the year.

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 judicial oversight. Individuals and groups could engage in the expression of views via the Internet, including by e-mail. Workplaces and Internet cafes provided Internet access, but most homes did not have such access. According to the International Telecommunication Union, 25 percent of residents used the Internet in 2011.

Academic Freedom and Cultural Events

There were no government restrictions on 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 law provides for freedom of internal movement, foreign travel, emigration, and repatriation, and the government generally respected these rights in practice.

Exile: The law does not prohibit forced exile, but the government did not employ it in practice.

Protection of Refugees

Access to Asylum: The country's laws do not provide for the formal granting of asylum or refugee status. However, the principal immigration officer has wide discretionary powers under immigration laws and may allow noncitizens to remain in the country. Officials worked with the international community and UN High Commissioner for Refugees (UNHCR) to provide assistance to a UNHCR-designated refugee in the country awaiting resettlement; the case remained pending at year's end.

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

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

Elections and Political Participation

Recent Elections: Parliament has 26 elected members. Of these, 17 are popularly elected and nine are nobles elected by their peers. Parliament elects the prime minister, who appoints the cabinet. Up to four cabinet members may be selected from outside parliament; they then also are seated in parliament during their tenure in the cabinet. The most recent parliamentary elections, held in November 2010, were deemed generally free and fair. In June the opposition Democratic Party of the Friendly Isles challenged Lord Tu'ivakano's government, but a motion of no confidence in the prime minister was defeated in October.

The king retains significant powers, such as those to withhold his assent to laws and dissolve parliament.

Political Parties: Nobles and cabinet members associated with the royal family have traditionally dominated parliament and government. For several decades a democracy movement has been building, and since 2005 three proreform political parties have been registered. The most powerful prodemocracy party is the opposition Democratic Party of the Friendly Isles.

Participation of Women and Minorities: There were no women elected to parliament. One woman joined the government and parliament by direct appointment to the cabinet. A woman may become queen, but the constitution forbids a woman to inherit hereditary noble titles or become a chief.

There were no members of minority ethnic groups in the government or parliament.

Section 4. Corruption and Lack of Transparency in Government

The law provides criminal penalties for official corruption. The government sometimes implemented the law, but officials engaged in corrupt practices with impunity, and corruption remained a serious problem. The Office of the Auditor General reports directly to parliament. The Office of the Anti-Corruption Commissioner is empowered to investigate official corruption.

There were unconfirmed reports of government corruption during the year. Bribe-taking and other forms of corruption in the police force reportedly occurred. Government preferences appeared to benefit unfairly businesses associated with government officials, nobles, and the royal family. There is no law requiring income and asset disclosure by appointed and elected officials. The royal family continued to exert significant influence over public finances.

The law does not specifically allow for public access to government information, and such access was a problem, especially when the government deemed the information sensitive. The Ministry of Information and Communication did not implement the Freedom of Information Policy, which gives persons the right to access information on the roles and operations of each workplace in the public sector.

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

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

The government has an independent commission on public relations that investigates and seeks to resolve complaints about the government.

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

The law confirms the special status of members of the royal family and the nobility. While social, cultural, and economic facilities were available to all citizens regardless of race and religion, members of the hereditary nobility had substantial advantages, including control over most land and a generally privileged status.

Women

Rape and Domestic Violence: Rape is punishable by up to 15 years' imprisonment. The law does not recognize spousal rape. The incidence of rape appeared to be infrequent, although there were no reliable statistics. Police investigate reported rape cases, which are then prosecuted under the law. Police reported no rape cases during the year. Nongovernmental organizations (NGOs) often report a higher incidence of rape than police report. The Women and Children Crisis Center reported seven rape cases during the year.

The law does not address domestic violence specifically, but it can be prosecuted under laws against physical assault. The Police Domestic Violence Unit has a "no drop" policy in complaints of domestic assault, and these cases proceed to prosecution in the magistrates' courts. The no drop policy was introduced in 2009 because many women were reluctant to press charges against their spouses. The Police Domestic Violence Unit reported 246 cases during the year. Following reports of abuse, the unit's officers counseled victims. A male officer also counseled perpetrators. Police worked with the National Center for Women and Children as well as the Women and Children Crisis Center to provide shelter for abused women, and girls and boys under age 14. Both centers had a safe house for victims. The Free Wesleyan Church operated a hotline for women in trouble, and the Salvation Army provided counseling and rehabilitation programs.

The Police Domestic Violence Unit, together with various NGOs, including the National Center for Women and Children, the Women and Children Crisis Center, and the Salvation Army, conducted public awareness and prevention campaigns against domestic violence. Statistics compiled by the Women and Children Crisis Center indicated that 246 persons, including 155 women, 65 men, and 26 children, received assistance from the center during the year.

Sexual Harassment: Sexual harassment is not a crime under the law, but physical sexual assault can be prosecuted as indecent assault. Based on complaints received

by the Police Domestic Violence Unit, sexual harassment of women sometimes occurred. The Women and Children Crisis Center reported three sexual harassment cases during the year.

Reproductive Rights: Couples and individuals have the right to decide freely and responsibly the number, spacing, and timing of their children. Public hospitals and health centers and a regional NGO's clinic provided free information about and access to contraception. Under a Ministry of Health policy, a woman is not permitted to undergo a tubal ligation at a public hospital without the consent of her husband or, in his absence, her male next of kin. Public hospitals and health centers provided free prenatal, obstetric, and postpartum care.

Discrimination: Inheritance laws, especially those concerned with land, discriminate against women. Women can lease land, but inheritance rights pass through the male heirs. Under the inheritance laws, the claim to a father's estate by a male child born out of wedlock takes precedence over the claim of the deceased's widow or daughter. If there are no male relatives, a widow is entitled to remain on her husband's land as long as she does not remarry and remains celibate. Both the inheritance laws and the land-rights laws increased economic discrimination experienced by women in terms of their ability to access credit and own and operate businesses.

Women had lower labor force participation rates than their male counterparts (74.6 percent for men compared with 52.7 percent for women). Unemployment levels were higher for women, at 7.4 percent, compared with 3.6 percent for men. As of 2003--the latest figures available--average weekly earnings were higher for men: 127 pa'anga (\$76.64) compared with 112 pa'anga (\$67.59) for women. Women who rose to positions of leadership often had links with the nobility. Some female commoners held senior leadership positions in business and government, including that of governor of the Reserve Bank.

The Office of Women within the Ministry of Education, Women, and Culture is responsible for facilitating development projects for women. During the year the office assisted women's groups in setting up work programs.

The National Center for Women and Children and the Women and Children Crisis Center focused on domestic abuse and improving the economic and social conditions of women. Other NGOs, including Ma'a Fafine Moe Famili (For Women and Families, Inc.) and the Tonga National Women's Congress, promoted

human rights, focusing on the rights of women and children. Several religiously affiliated women's groups also advocated for women's legal rights.

Children

Birth Registration: Birth in the country does not confer citizenship. Citizenship is derived from one's parents or from the citizen parent if only one parent is a citizen. The law requires births to be registered within three weeks, and this was usually done in practice.

Education: Education is compulsory and free for all children between the ages of six and 14.

Child Abuse: According to Police Domestic Violence Unit statistics, there were 23 reports of physical assault on female children (up to age 20). Prosecutions were initiated in 10 of these cases; at year's end there were six convictions and four cases pending trial. There were no reported cases of assaults on male children.

Sexual Exploitation of Children: The minimum age for consensual sex is 16 years. Violators may be charged with "indecent assault on a female," which carries a maximum penalty of two years' imprisonment, or indecent assault of a child under age 16, which carries a maximum sentence of five years. A separate provision of law prohibits carnal knowledge of a girl under age 12, with a maximum penalty of life imprisonment. The law also prohibits child pornography, with penalties of a fine of up to 100,000 pa'anga (\$60,350) or up to 10 years' imprisonment for individuals and a fine of up to 250,000 pa'anga (\$150,875) for corporations. These laws generally were enforced when cases were reported.

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

Anti-Semitism

There was no known resident Jewish community, and there were no reports of anti-Semitic acts.

Trafficking in Persons

See the Department of State's *Trafficking in Persons Report* at www.state.gov/j/tip.

Persons with Disabilities

No laws specifically prohibit discrimination against persons with physical, sensory, intellectual, or mental disabilities, and there are no legally mandated provisions for services for them. There were no programs to ensure access to buildings for persons with disabilities, and in practice most buildings were not accessible. There also were no programs to ensure access to communications and information for persons with disabilities. The Tonga Red Cross Society (TRCS) operated a school for children with disabilities and conducted occasional home visits. A program of the Ministry of Education, Women, and Culture to assimilate children with disabilities into primary schools continued during the year. However, many school buildings were not accessible to students with physical disabilities, and attendance rates of children with disabilities at all educational levels were lower than those of students without disabilities. It was possible for some children with disabilities to attend regular schools, depending on the nature and degree of the child's disability, but children with more severe disabilities generally attended the TRCS-run school.

An NGO advocated on behalf of persons with disabilities, but there was no specific government agency with responsibility for protecting the rights of persons with disabilities.

National/Racial/Ethnic Minorities

According to the Ministry of Labor, Commerce, and Industries, ownership and operation of food retail stores in the country is legally restricted to citizens. Despite this policy Chinese nationals dominated the retail sector in many towns. They also moved into unrestricted sectors of the economy. There were reports of crime and societal discrimination targeted at members of the Chinese minority.

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

Under the law "sodomy with another person" is a crime, with a maximum penalty of 10 years' imprisonment, but there were no reports of prosecutions under this provision for consensual sexual conduct between adults, regardless of the gender of the parties. A subculture of transgender dress and behavior was tolerated, and a prominent NGO's annual festival highlighted transgender identities. There were no reports of violence against persons based on sexual orientation or gender

identity, but social stigma or intimidation may have prevented incidents of discrimination or violence from being reported.

Other Societal Violence or Discrimination

There were no reports of discrimination or violence against persons based on HIV/AIDS status, but social stigma or intimidation may have prevented incidents of discrimination or violence from being reported.

Section 7. Worker Rights

a. Freedom of Association and the Right to Collective Bargaining

The country has no formalized labor code. The law neither protects nor prohibits the right of workers to form and join independent unions, strike, and engage in collective bargaining, and regulations on the formation of unions, strikes, and collective bargaining were never promulgated. There is no law specifically prohibiting antiunion discrimination or providing for reinstatement of workers fired for union activity. There were no formally registered unions. The Friendly Islands Teachers Association and the Tonga Nurses Association were incorporated under the Incorporated Societies Act but have no formal bargaining rights under the act. The Public Servants Association acted as a de facto union representing all government employees. There have been strikes in the past, but none took place during the year.

In practice collective bargaining was not known to take place. There were no known reports of antiunion or anti-association discrimination during the year. There was no dispute resolution mechanism in place specifically for labor disputes, although persons could take their cases to court.

b. Prohibition of Forced or Compulsory Labor

The law prohibits forced or compulsory labor. There were anecdotal reports that some foreign workers may have been coerced into forced labor.

Also see the Department of State's *Trafficking in Persons Report* at www.state.gov/j/tip.

c. Prohibition of Child Labor and Minimum Age for Employment

Although there is no legislation prohibiting child labor, no child labor was reported to exist in the wage economy. According to the National Center for Women and Children and other NGOs, some school-age children worked in the informal sector in traditional family activities such as subsistence farming and fishing.

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 is no minimum wage law, although there are government guidelines for wage levels set by the Ministry of Commerce, Tourism and Labor. Data from the 2009 Household Income and Expenditure Survey (the latest available) indicated that 3.1 percent of the population lived in absolute poverty and 22.5 percent lived below the basic needs poverty line. While the latter group did not live in absolute poverty, they struggled to meet costs like education, transport, and utility bills.

Heads of government departments have the discretion to approve annual leave once a government employee has worked for one calendar year. Government employees are entitled to paid annual holidays. The government enforced occupational health and safety standards that are stipulated in laws relating to a specific sector.

Labor regulations limit the work week to 40 hours. There are no laws mandating premium pay for overtime or prohibiting excessive compulsory overtime. Government employees were either paid for overtime, if overtime claims fell within their employing ministry's budget, or granted compensatory annual leave.

The Ministry of Commerce, Tourism and Labor is responsible for enforcing labor laws and regulations in the wage sector of the economy. However, with only two officers in the ministry, enforcement of regulations was inconsistent.

Few industries exposed workers to significant danger, and industrial accidents reportedly were rare.