

TONGA 2015 HUMAN RIGHTS REPORT

EXECUTIVE SUMMARY

The Kingdom of Tonga is a constitutional monarchy. On July 4, King Tupou VI was officially crowned after succeeding his older brother in 2012. The king, popularly elected parliamentary leaders, the nobility and their representatives, prominent commoners, and democratic reform figures dominated political life. The parliamentary elections in November 2014 were deemed generally free and fair, and in December 2014 parliament elected long-time political reform advocate Samiuela 'Akilisi Pohiva as prime minister. Civilian authorities maintained effective control over the security forces.

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

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

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, and there were no reports that government officials employed them.

Prison and Detention Center Conditions

Prison and detention center conditions generally met international standards.

Administration: Penal and judicial authorities did not use alternatives to incarceration for nonviolent offenders. The country did not have an ombudsman to serve on behalf of prisoners and detainees.

Independent 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. The government permitted monitoring visits by international human rights observers, but there were no such visits reported during the year.

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 force, under the minister of police and prisons, maintains internal security. His Majesty’s Armed Forces (HMAF), under the minister of defense, is responsible for external security. In emergency situations, the HMAF also shares domestic security duties with the police. Civilian authorities maintained control over the HMAF and police, and the government has effective mechanisms to investigate and punish abuse and corruption. There were no reports of impunity involving the security forces during the year.

Arrest Procedures and Treatment of Detainees

Under normal circumstances, police have the right to arrest detainees without a warrant, but they must bring detainees before a local magistrate or the officer in charge of the station within 24 hours. In most cases, magistrates set bail. Other than those arrested allegedly during the commission of a crime, persons are apprehended with warrants issued by a local magistrate and were also brought before a local magistrate within 24 hours for judicial determination of the legality of the detention. Suspects are detained incommunicado if there is a risk that they will tamper with evidence or interfere with witnesses. The constitution provides the right to initiate habeas corpus proceedings. The law does not specifically permit nor deny unlimited access by counsel and family members to detained

persons, but authorities generally facilitated access. No legal aid framework existed during the year to provide services for the indigent. Accused persons may represent themselves if they cannot afford legal counsel.

e. Denial of Fair Public Trial

The constitution provides for an independent and impartial judiciary but gives the lord chancellor, appointed by the king, responsibility for all matters related to the judiciary, including appointment, investigation, and removal of judges.

Trial Procedures

The constitution provides for the right to a fair trial, and the judiciary generally enforced this right. Although unavailability of judges, witnesses, or lawyers could delay cases, legal authorities processed most cases 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 of their choice in a timely manner, and have adequate time and facilities to prepare a defense. Public defenders are not provided, but local lawyers occasionally took pro bono cases. The law extends these rights to all citizens without discrimination.

Political Prisoners and Detainees

There were no reports of political prisoners or detainees.

Civil Judicial Procedures and Remedies

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 there were no reports that the government failed to respect these prohibitions.

Section 2. Respect for Civil Liberties, Including:

a. Freedom of Speech and Press

The constitution provides for freedom of speech and press, and the government generally respected these rights. An independent press, the judiciary, and a functioning democratic political system combined to promote freedom of speech and press.

Press and Media Freedoms: The independent media were active and expressed a wide variety of views without restriction, although some self-censorship occurred.

Censorship or Content Restrictions: 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 board-appointed censors review all TBC programming prior to broadcast.

Libel/ Slander Laws: There were no libel judgments against media organizations initiated during the year. In June the court fined the *Kele'a* newspaper's editor and publisher 2,000 pa'anga (\$940) for contempt of court and publishing an article entitled "Questionable whether a Court Order should Look Like This."

Internet Freedom

The government did not restrict or disrupt access to the internet or censor online content, and there were no credible reports that the government monitored private online communications without appropriate legal authority. Workplaces and internet cafes provided internet access, but most homes did not have such access.

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 the freedoms of assembly and association, and the government generally respected these rights.

c. Freedom of Religion

See the Department of State's *International Religious Freedom Report* at www.state.gov/religiousfreedomreport/.

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. The government cooperated with the Office of the UN High Commissioner for Refugees and other humanitarian organizations in providing protection and assistance to refugees and other persons of concern.

Protection of Refugees

Access to Asylum: The country's laws do not provide for the formal granting of asylum or refugee status. The principal immigration officer has wide discretionary powers under immigration laws, however, and may allow noncitizens to remain in the country.

Section 3. Freedom to Participate in the Political Process

The constitution and law provide citizens the ability to choose their government in free and fair periodic elections, based on universal and equal suffrage, and citizens exercised this ability.

Elections and Political Participation

Recent Elections: Observers deemed the most recent parliamentary elections in November 2014 to be generally free and fair. Parliament has 26 elected members. Of these, citizens elect 17, and the 33 hereditary nobles elect nine of their peers. Parliament elects the prime minister, who appoints the cabinet. The prime minister may select up to four cabinet members from outside parliament, who are also seated in parliament during their tenure in the cabinet.

The king retains significant powers, such as withholding his assent to laws and dissolving parliament.

Political Parties and Political Participation: Since 2005 three reform-oriented political parties were registered. The most powerful party was the Democratic

Party of the Friendly Isles. These parties continued to work towards a political system in which an increasing number of members of parliament are elected by the people, in relation to the number of seats reserved for the nobility. On December 29, parliament selected 'Akilisi Pohiva, leader of Tonga's Democratic Party of the Friendly Islands, to become prime minister, the first commoner to be elected prime minister.

Participation of Women and Minorities: No women were elected to parliament. A woman may become queen, but the constitution forbids women from inheriting hereditary noble titles or becoming chiefs.

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, but the government did not implement the law effectively, and officials sometimes engaged in corrupt practices with impunity. There were some reports of government corruption during the year.

Corruption: In February a nobles' representative for Vava'u was fined 10,560 pa'anga (\$4,965) on five weapons charges.

Bribery and other forms of corruption in parliament were reported. In August the Parliament Standing Committee was investigating the minister of infrastructure and tourism for alleged nepotism, and misuse and mismanagement of government properties. After admitting to the allegations in Parliament, the minister survived an impeachment motion in October. The prime minister in response to the impeachment motion terminated the minister's portfolio as minister of infrastructure but retained his portfolio as minister of tourism. He is also to commence work without pay for five months effective in January 2016.

Government preferences appeared to benefit unfairly businesses associated with government officials, nobles, and the royal family. The royal family continued to exert significant influence over public finances.

The Office of the Auditor General reports directly to parliament. The Office of the Anti-Corruption Commissioner is empowered to investigate official corruption.

Both entities actively collaborated with civil society, but they neither operated effectively or independently nor were they sufficiently resourced.

Financial Disclosure: No law requires income and asset disclosure by appointed and elected officials.

Public Access to Information: 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 Freedom of Information Policy, implemented by the Ministry of Information and Communication, gives persons the right to access some information on the roles and operations of each workplace in the public sector and to lodge a complaint to the commissioner of public relations if a government ministry refuses to disclose the requested information. Citizens exercised this right during the year.

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.

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

The constitution prohibits general discrimination based on race, sex, religion, political opinion, national origin or citizenship, social origin, disability, sexual orientation and/or gender identity, age, language, HIV-positive status or other communicable diseases. The government did not effectively enforce this provision, however, and 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.

The law provides for the unequal treatment of women.

Women

Rape and Domestic Violence: Rape is punishable by up to 15 years in prison. The law recognizes 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. As of September the Police Domestic Violence Unit reported one rape case. Nongovernmental organizations (NGOs) often reported a higher incidence of rape than did police reports. As of August the Women and Children Crisis Center reported three sexual assault cases.

The Family Protection Act, which came into force in July 2014, makes domestic violence a crime punishable by up to 12 months in prison, a fine of 2,000 pa'anga (\$940), or both. Repeat offenders face up to three years in prison or a maximum fine of 10,000 pa'anga (\$4,702). The act provides for protection from domestic violence, introduces protection orders, clarifies the duties of police, and promotes the health, safety, and well-being of domestic violence victims.

The police domestic violence unit has a “no-drop” policy in complaints of domestic assault--once filed, domestic violence cases cannot be dropped and proceed to prosecution in the magistrates' courts. Following reports of abuse, the unit's officers counsel victims. Male officers also counsel perpetrators. Police work 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 operated a safe house for victims. As of August the Women and Children Crisis Center had 48 victims in their safe houses, eight women, 23 girls, and 17 boys. The Crisis Center also reported 163 total domestic violence cases. The Free Wesleyan Church operated a hotline for women in trouble, and the Salvation Army provided counseling and rehabilitation programs.

As of August statistics compiled by the Women and Children Crisis Center indicated that 184 persons received assistance from the center, but the Police Domestic Violence Unit reported 242 domestic violence cases.

Sexual Harassment: Sexual harassment is not a crime under the law, but physical sexual assault can be prosecuted as indecent assault. Sexual harassment within a domestic relationship is an offense. Complaints received by the police domestic violence unit indicated that sexual harassment of women sometimes occurred. As of August the Women and Children Crisis Center reported no cases of sexual harassment.

Reproductive Rights: In general, couples and individuals have the right to decide the number, spacing, and timing of their children; manage their reproductive health; and to have the information and means to do so, free from discrimination, coercion, and violence. Public hospitals, health centers, and several local and international

NGOs provided free information about and access to contraception; however, 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. Spousal consent is not required for men to undergo a vasectomy. Public hospitals and health centers provide free prenatal, obstetric, and postpartum care. Many pregnant women reportedly did not seek these services, and availability of these services was reduced in the outer islands, which anecdotally contributed to a high maternal mortality rate of 120 deaths per 100,000 live births. According to data published by the World Health Organization, skilled health personnel attend 99 percent of births although not in the outer islands.

Discrimination: Inheritance laws, especially those concerned with land, discriminate against women. Women can lease land, but inheritance rights pass through the male heirs only. 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 that women experienced in terms of their ability to access credit, and own and operate businesses.

Discrimination with respect to employment and wages occurred with respect to women (see section 7.d.). Women who rose to positions of leadership often had links with the nobility. Some female commoners held senior leadership positions in businesses and government.

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.

Child Abuse: As of August the Women and Children Crisis Center reported 18 cases of physical assault on female children (up to age 20) and cases of assaults on male children

Early and Forced Marriage: The legal minimum age of marriage is 15, and the rate of marriage for children under the age of 18, while not known, was believed to be low.

Sexual Exploitation of Children: The law prohibits child pornography with penalties of a fine of up to 100,000 pa'anga (\$47,019) or up to 10 years in prison for individuals and a fine of up to 250,000 pa'anga (\$117,547) for corporations. The minimum age for consensual sex is 16 years. Violators may be charged with “carnal knowledge of a child under age 12,” which carries a maximum penalty of life in prison, or “carnal knowledge of a child under 15,” which carries a maximum penalty of five years in prison. There were anecdotal reports of children being subjected to domestic sex trafficking.

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/rls/tiprpt/.

Persons with Disabilities

Beyond the constitution's inclusion of disability as a prohibited basis for discrimination, 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 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. Many school buildings, however, 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.

In May 2014 the cabinet adopted the National Policy on Disability Inclusive Development 2014 to 2018 and the Action Plan for the National Policy on Disability Inclusive Development. Under the policy, the government established a National Council on Disability and designated the Ministry of Internal Affairs to work on disability-related problems.

National/Racial/Ethnic Minorities

According to the Ministry of Commerce, Tourism, and Labor, the law restricts to citizens ownership and operation of food retail stores in the country. 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.

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

By law “sodomy with another person” is a crime with a maximum penalty of 10 years in prison, but there were no reports of prosecutions under this provision for consensual sexual conduct between adults, regardless of the gender of the parties. No laws specifically prohibit discrimination based on sexual orientation or gender identity or address hate crimes. No criminal justice mechanisms exist to aid in the prosecution of bias-motivated crimes against members of the lesbian, gay, bisexual, transgender, and intersex (LGBTI) community. Society accepted a subculture of transgender dress and behavior, 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. In May at the Pacific Sexual Diversity Network hosted conference for members of the LGBTI community in Tonga, a small religious group held a protest outside the conference venue.

HIV and AIDS Social Stigma

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 law provides for the right to form unions, but the government has not promulgated regulations on the formation of unions, collective bargaining, or the right to strike. No law specifically prohibits antiunion discrimination or provides for reinstatement of workers fired for union activity.

There was no dispute resolution mechanism in place specifically for labor disputes, although persons could take their cases to court.

There were no formally registered unions, although a number of workers' organizations existed. The Friendly Islands Teachers Association and the Tonga Nurses Association were legally incorporated as civil societies, and the Friendly Island Seafarer's Union Incorporated was affiliated with the International Transport Workers Federation. None has formal bargaining rights under the law. The Public Service Association acted as a de facto union representing all government employees. Collective bargaining was not known to take place.

b. Prohibition of Forced or Compulsory Labor

The law prohibits forced or compulsory labor. The law prescribes up to 20 years imprisonment, which is generally considered sufficient to deter violations. Although the government made some progress in enforcing relevant legal provisions, no data were available on government efforts specifically to address forced labor. There were some anecdotal reports of forced labor among women and children in domestic service (also see section 7.c.).

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

c. Prohibition of Child Labor and Minimum Age for Employment

No legislation prohibits child labor or specifies a minimum age for employment. There were no reports that child labor existed in the formal 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. There were also reports that some children were subjected to commercial sexual exploitation (see section 6, Children) and involuntary domestic servitude.

Also see the Department of Labor's *Findings on the Worst Forms of Child Labor* at www.dol.gov/ilab/reports/child-labor/findings/.

d. Discrimination with Respect to Employment or Occupation

The law does not prohibit discrimination regarding race, color, sex, religion, political opinion, national origin or citizenship, social origin, disability, sexual orientation and/or gender identity, age, HIV-positive status or other communicable diseases, or language. Discrimination with respect to employment and wages occurred with respect to women (see section 6, Women). Women participated in the work force at a lower rate than that of their male counterparts (63 percent for men compared with 42 percent for women). As of 2003 (latest available data), average weekly earnings were higher for men: 127 pa'anga (\$60) compared with 112 pa'anga (\$53) for women. Reports indicated that discrimination against foreign domestic workers occurred during the year. Some employers reportedly confiscated foreign domestic workers' passports and subjected the workers to exploitative practices.

e. Acceptable Conditions of Work

There is no minimum wage law, although the Ministry of Commerce, Tourism, and Labor set guidelines for wage levels. 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 such as education, transport, and utility bills.

Labor regulations limit the workweek to 40 hours. No laws mandate premium pay for overtime or prohibit 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. 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 and three months' maternity leave.

The law stipulates specific occupational health and safety standards for each sector, such as fisheries and agriculture. Workers can remove themselves from situations that endanger health or safety without jeopardizing their employment.

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

There were no reports of violations of wage or hours of work provisions. Few industries exposed workers to significant danger.