

TONGA 2018 HUMAN RIGHTS REPORT

EXECUTIVE SUMMARY

The Kingdom of Tonga is a constitutional monarchy, with a largely democratically elected parliament that elects the prime minister. Following the November 2017 election, which international observers characterized as generally free and fair, Prime Minister Samuela 'Akilisi Pohiva was returned to office for a second term. While Pohiva and his cabinet are responsible for most government functions, King Tupou VI, the nobility, and their representatives retain significant authority.

Civilian authorities maintained effective control over the security forces.

Human rights issues included corruption; criminalization of same-sex sexual activity, although the law was not enforced; and no progress in reducing the worst forms of child labor.

The government took steps to prosecute officials who committed abuses.

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

a. Arbitrary Deprivation of Life and Other Unlawful or Politically Motivated Killings

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

b. Disappearance

There were no reports of disappearances by or on behalf of government authorities.

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

There were no significant reports regarding prison or detention center conditions that raised human rights concerns.

Physical Conditions: Hu'atolitoli is the only prison facility for persons with mental disabilities. Government sources acknowledged the facility was not adequately equipped to treat them. Church leaders visited inmates approximately four to six times a week.

Administration: There were no reports that authorities did not allow prisoners and detainees access to visitors or religious observance.

Independent Monitoring: The government permitted monitoring visits by international human rights observers, but there were no such visits as of November.

Improvements: The government began construction of a new facility for persons with mental disabilities.

d. Arbitrary Arrest or Detention

The constitution prohibits arbitrary arrest and detention and provides for the right of any person to challenge the lawfulness of his or her arrest or detention in court, and the government generally observed these requirements.

Role of the Police and Security Apparatus

The national police force maintains internal security. His Majesty's Armed Forces (HMAF) is responsible for external security but also has some domestic security responsibilities. The police and HMAF report to the Ministry of Police and the Ministry of Defense, respectively. 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

Police may arrest suspects without a warrant during the commission of a crime; otherwise, authorities apprehend suspects with warrants issued by a local magistrate. In either case, authorities brought those arrested before a local magistrate within 24 hours, including on weekends and holidays, for judicial

determination of the legality of the detention. Authorities promptly informed arrested persons of charges against them. The law provides for a functioning bail system. The constitution provides the right to initiate habeas corpus proceedings. Access to arrested persons by counsel, family, and others may be restricted, but authorities generally facilitated access. No legal aid framework existed to provide services for the indigent. Accused persons must generally represent themselves if they cannot afford legal counsel, although in more serious cases, the judge may, but is not required to, appoint a lawyer pro bono.

e. Denial of Fair Public Trial

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

Trial Procedures

The constitution provides for the right to a fair public trial, and an independent judiciary generally enforced this right. Although unavailability of judges, witnesses, or lawyers could delay cases, legal authorities processed most cases without undue delay. Defendants are presumed innocent and cannot be compelled to testify or confess guilt. Authorities inform them promptly and in detail of charges, and free interpretation is available if necessary. Defendants 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. There is no provision for public defenders, but local lawyers accepted pro bono cases on an ad hoc basis. Defendants have free access to an interpreter in court, if needed.

Political Prisoners and Detainees

There were no reports of political prisoners or detainees.

Civil Judicial Procedures and Remedies

Citizens may seek redress through domestic courts for any violation of a human right provided for in the law.

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

The constitution prohibits such actions, and police generally respect these provisions. In August, however, a court in Nuku'alofa found that evidence in a drug case recovered using a search warrant was inadmissible because the search was carried out in an unlawful manner.

Section 2. Respect for Civil Liberties, Including:

a. Freedom of Expression, Including for the Press

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

Press and Media Freedom: Privately owned media were active and expressed a wide variety of views without restriction, although some self-censorship occurred. The dismissal of two employees at government-owned Tonga Broadcasting Commission (TBC) in 2017 raised concerns about the independence of the state-owned media. In explaining the firings, the prime minister stated that broadcasters had improperly amplified opposition messages while downplaying government messages.

Censorship or Content Restrictions: Media outlets reported on political developments and high-profile court cases but privately owned media exercised self-censorship regarding high-profile individuals. The board of state-owned TBC directed that board-appointed censors review all TBC programming prior to broadcast.

Internet Freedom

The government did not restrict or disrupt access to the internet or censor online content, and there were no credible reports 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. According to the International Telecommunication Union, approximately 40 percent of the population had access to the internet in 2016.

Academic Freedom and Cultural Events

There were no government restrictions on academic freedom or cultural events.

b. Freedoms 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

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 United Nations High Commissioner for Refugees and other humanitarian organizations in providing protection to internally displaced persons, refugees, asylum seekers, stateless persons, or other persons of concerns.

Protection of Refugees

Access to Asylum: The country's laws do not provide for the formal granting of asylum or refugee status, and the government has not established a system for providing protection to refugees. The principal immigration officer has wide discretionary powers under immigration laws, however, and may allow noncitizens to remain in the country, including on humanitarian grounds.

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 held by secret ballot, based on universal and equal suffrage.

Elections and Political Participation

Recent Elections: After the king dismissed parliament one year before the end of its normal term, the country held elections in November 2017. International observers deemed the parliamentary election to be generally free and fair. In

December 2017, the new parliament re-elected Prime Minister Samuela ‘Akilisi Pohiva.

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. The law accords these cabinet members parliamentary seats for the duration of their tenure in the cabinet.

The king retains significant powers, such as to withhold his assent to laws (with no possibility of parliamentary override) and to dissolve parliament.

Participation of Women and Minorities: Although no laws limit participation of women or members of minorities in the political process, a variety of institutional and cultural factors have kept women’s representation low. Among these were the reservation of nine seats in parliament for nobles, all of whom are men; continuing male domination of informal local government systems, which deny women “entry-level” positions in politics; and cultural attitudes across the population about women’s proper roles and competence. The rate of registration to vote among women is the same as the rate among men, and women have the same legal rights to run for election. Voters elected two women to parliament in the November 2017 election and several women were elected to local offices in 2016, suggesting incremental change. 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 corruption by officials. Although officials reportedly engaged in corrupt practices, the government generally implemented the law effectively. There were reports of government corruption during the year.

Corruption: In March police arrested former prime minister Lord Tu’ivakano and charged him with passport offenses, money laundering, and bribery in connection with the issuance of a passport to a Chinese national and possibly other matters. Hearings in the case were underway at the magistrate’s court in Fasi as of October.

There were media reports of bribery of custom employees, police officials, and members of parliament.

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 or elected officials.

Section 5. Governmental Attitude Regarding International and Nongovernmental Investigation of Alleged Abuses 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 often were cooperative and responsive to their views. The Office of the Ombudsman oversees the rights of every citizen in the country including members of the public service and vulnerable members of society such as women, children, prisoners, and persons with disabilities.

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

Women

Rape and Domestic Violence: Rape is punishable by a maximum of 15 years in prison. The law recognizes spousal rape. The law makes domestic violence a crime punishable by a maximum of 12 months in prison, a fine of 2,000 pa'anga (\$860), or both. Repeat offenders face a maximum of three years in prison or a maximum fine of 10,000 pa'anga (\$4,300). The law provides for protection from domestic violence, including protection orders; clarifies the duties of police; and promotes the health, safety, and well-being of domestic violence victims.

Police investigated reported rape cases, and the government prosecuted these cases under the law. In January, for example, a man was sentenced to nine years and nine months in jail for domestic violence, sexual assault, and incest. The police domestic violence unit has a “no-drop” policy in complaints of domestic assault, and once filed, domestic violence cases cannot be withdrawn and must proceed to prosecution in the magistrates’ courts. Tonga Police Force and the Women and Children Crisis Center (WCCC) conducted a workshop on gender bias training in

the Police Force. Gender bias was an issue that hindered the performance of officers in the field.

An estimated 40 percent of women have faced domestic or sexual violence in their lifetime and 80 percent of domestic violence victims are believed to be women. Police work with the National Center for Women and Children as well as with the WCCC to provide shelter for abused women, and girls and boys younger than 14 years. Both centers operated a safe house for victims. The Center reported an increase in sexual abuse cases involving teenagers ages 14 to 16.

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 is a common problem.

Coercion in Population Control: There were no reports of coerced abortion or involuntary sterilization.

Discrimination: Inheritance laws, especially those concerned with land, discriminate against women. Women can lease land, but inheritance rights pass through male heirs only; a male child born out of wedlock has precedence over 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. The inheritance and land rights laws also reduced women's ability to access credit and to own and operate businesses.

Discrimination against women with respect to employment and wages occurred (see section 7.d.).

Children

Birth Registration: Individuals acquire citizenship at birth automatically if at least one parent is a citizen. Birth in the country per se does not confer citizenship.

Child Abuse: The WCCC implemented a variety of child abuse awareness programs at schools from primary to tertiary levels.

Early and Forced Marriage: The legal minimum age for marriage is 15 years. According to nongovernmental organizations (NGOs), child marriages were a

result of several factors, including parental pressure, teenage pregnancy, or forced marriage to rapists.

Sexual Exploitation of Children: The law prohibits child pornography with penalties of a maximum fine of 100,000 pa'anga (\$43,000) or a maximum of 10 years in prison for individuals and a maximum fine of 250,000 pa'anga (\$108,000) for corporations. The minimum age for consensual sex is 15. Violators who sexually abuse children 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. See the Department of State’s *Annual Report on International Parental Child Abduction* at <https://travel.state.gov/content/travel/en/International-Parental-Child-Abduction/for-providers/legal-reports-and-data.html>.

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

The constitution prohibits discrimination based on disability, but no laws specifically prohibit discrimination against persons with physical, sensory, intellectual, or mental disabilities. There were no legally mandated services or government programs for adults with disabilities, including for building accessibility or access to communications and information.

A Ministry of Education and Training program to bring children with disabilities into primary schools continued during the year, with 18 students enrolled. 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.

As of September the National Council on Disability, established in 2017, and the Ministry of Internal Affairs had implemented a program to assist disabled individuals. Each qualifying individual receives 75 pa'anga (\$32.30) monthly.

National/Racial/Ethnic Minorities

The law restricts ownership and operation of retail food stores to citizens. Ethnic Chinese citizens dominated the retail sector in many towns. There were reports of crime and societal discrimination directed at members of the Chinese minority.

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

Sodomy 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. No law specifically prohibits discrimination based on sexual orientation or gender identity or addresses hate crimes. No criminal justice mechanisms exist to aid in the prosecution of bias-motivated crimes against lesbian, gay, bisexual, transgender, or intersex (LGBTI) individuals. Society accepted a subculture of transgender dress and behavior, and a prominent NGO's annual festival highlighted transgender identities. There was one report of violent assault against LGBTI individuals based on their sexual orientation or gender identity. Social stigma or intimidation may have prevented reporting of other incidents of violence or discrimination.

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 reporting of incidents of discrimination or violence.

Section 7. Worker Rights

a. Freedom of Association and the Right to Collective Bargaining

The law provides for the right to form and join independent 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 cases to court or refer cases to the Office of the Ombudsman. There were no reports of collective bargaining.

Government enforcement of freedom of association was not entirely effective. Penalties for violations incur criminal fines, which are not sufficient to deter violations. Administrative and judicial procedures were subject to lengthy delays and appeals.

The government and employers generally respected freedom of association. Trade unions and a variety of other worker associations exist. For example, the Friendly Islands Teachers Association and the Tonga Nurses Association were legally incorporated as civil society organizations, and the Friendly Island Seafarer's Union Incorporated was affiliated with the International Transport Workers Federation. The Public Service Association acted as a de facto union representing all government employees.

b. Prohibition of Forced or Compulsory Labor

The law prohibits all forms of forced or compulsory labor. The government effectively enforced the law. Observers generally considered imprisonment penalties sufficient to deter violations. Although the government made some progress in enforcing relevant legal provisions, no data was available on government efforts specifically to address forced labor. There were unconfirmed, anecdotal reports of forced labor among women and children in domestic service (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 of commercial sexual exploitation and involuntary domestic servitude of some children.

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 and Occupation

The law does not prohibit discrimination based on any particular personal characteristic, feature, or group affiliation. Discrimination against women in employment and wages occurred. Women participated in the work force at a lower rate than men, were generally employed in lower-skilled jobs, and earned measurably less than men earn.

e. Acceptable Conditions of Work

There is no minimum wage, but the Ministry of Commerce, Consumer, Trade, Innovation, and Labor sets wage level guidelines. While no recent data was available, relatively few people lived in destitution, but a significant fraction of the population had difficulty paying for more than basic needs, such as education, transportation, and utilities. The law stipulates occupational health and safety standards for each sector, such as fisheries and agriculture. These standards are current and appropriate for main industries. Workers can remove themselves from situations that endanger health or safety without jeopardizing their employment.

Enforcement of regulations was inconsistent. The Ministry of Commerce, Consumer, Trade, Innovation, and Labor sought to enforce these standards in all sectors, including the informal economy; however, there were an insufficient number of inspectors. Penalties for violations took the form of monetary fines, which were adequate to deter violations.

Few industries exposed workers to significant danger.