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2009 Human Rights Reports: Tonga

BUREAU OF DEMOCRACY, HUMAN RIGHTS, AND LABOR

2009 Country Reports on Human Rights Practices

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The Kingdom of Tonga is a constitutional monarchy with a population of approximately 102,000. Political life is dominated by King Siaosi (George) Tupou V, the nobility, and a few prominent commoners. The most recent election for "people's representative" seats in Parliament, held in April 2008, was deemed generally free and fair. There were several nascent political parties. A state of emergency declared following a 2006 riot in the capital of Nuku'alofa remained in effect but limited in scope to Nuku'alofa. Civilian authorities generally maintained effective control of the security forces.

Citizens lacked the ability to change their government. The government at times restricted media coverage of certain political topics. Government corruption was a problem, and discrimination against women continued.

RESPECT FOR HUMAN RIGHTS

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 law prohibits such practices, and the government generally respected these prohibitions in practice.

Prison and Detention Center Conditions

Prison and detention center conditions generally met international standards, and the government permitted visits by family members and church representatives. The Tonga Red Cross (TRC) monitored prison conditions through quarterly

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

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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 security apparatus consists of the Tonga Defense Services (TDS) and a police force. The minister of defense controls the TDS, which is responsible for external security and, under the state of emergency, shared domestic security duties with the police.

The minister of police and prisons directs the police force of approximately 470 persons. Incidents of bribe taking and other forms of corruption in the police force reportedly occurred. Reports of corruption and other public complaints are referred to a specific police office that conducts internal investigations and, if necessary, convenes a police tribunal. 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 a community law center (CLC). However, the CLC did not have a dedicated source of funding during the year and was dependent on donations.

e. Denial of Fair Public Trial

The constitution provides for an independent judiciary, and the government generally respected judicial independence in practice. The highest-ranking judges historically have been foreign nationals. Judges hold office "during good behavior" and otherwise cannot be dismissed during their terms.

The court system consists of the Privy Council, the Court of Appeal, the Supreme Court, the police magistrate's court, and the Land Court. The king's Privy Council presides over cases relating to disputes regarding titles of nobility and estate boundaries and hears appeals from the Land Court.

The TDS and the police force both have tribunals, which cannot try civilians.

Trial Procedures

The constitution provides for the right to a fair trial, and an independent judiciary generally enforced this right. Trials are public, and defendants have the option to request a seven-member jury. Defendants are presumed innocent, may question witnesses against them, and have access to government-held evidence. They have the right to be present at their trials and to consult with an attorney in a timely manner. Public defenders are not provided, but the CLC provided free

legal advice and representation in court. Local lawyers occasionally took pro bono cases. Defendants have the right of appeal. The law extends these rights to all citizens.

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 of the press, but the government did not always respect these rights in practice.

On March 25, a Supreme Court jury found member of Parliament (MP) Sione Teisina Fuko and four other defendants not guilty of sedition charges relating to statements they made prior to the 2006 riot. The chief justice had dismissed the charges against a sixth man in the case the previous week, citing insufficient evidence.

In July the Court of Appeal heard the appeal of MPs 'Akilisi Pohiva, 'Isileli Pulu, Clive Edwards, and 'Ulititi Uata, and former MP Lepolo Taunisila, who were charged in 2007 with sedition in relation to speeches they made at political rallies just prior to the 2006 riot. On September 9, the court ordered that all indictments against four of the five politicians be dismissed. The court stated that the prosecution had not established that the four appellants had conspired to encourage violence. The court upheld one individual charge against Edwards of "speaking seditious words"; that case was awaiting trial at year's end.

Government-controlled media outlets were criticized for exercising self-censorship. Since the political campaigns of 2008, the Tonga Broadcasting Commission (TBC)'s board has directed that all programming be reviewed by TBC board-appointed censors prior to broadcast. During parliamentary debates in September, MP Clive Edwards told the House that a prerecorded radio program in which he participated still had not been broadcast a week later. MP 'Akilisi Pohiva also claimed that parts of a speech he made were edited when it was rebroadcast by the TBC.

Media access to parliamentary debates also was restricted. In June 2008 the speaker of Parliament announced that he would allow only one reporter, from the TBC, into Parliament during debates, and only for one hour. The print media must wait for the official minutes, usually published several days after Parliament closes.

While there was little editorializing in the government-owned media, opposition opinion in the form of letters to the editor,

along with government statements and letters, appeared regularly. From time to time, the national media carried comments, including some by prominent citizens, critical of government practices and policies.

Internet Freedom

There were no government restrictions on access to the Internet or reports that the government monitored e-mail or Internet chat rooms. Individuals and groups could engage in the peaceful expression of views via the Internet, including by e-mail. Lack of infrastructure limited access to a certain extent, but there were Internet cafes available in the larger towns in all three of the country's main island groups. The International Telecommunication Union reported that approximately 8 percent of the country's inhabitants used the Internet in 2008.

Academic Freedom and Cultural Events

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

b. Freedom of Peaceful Assembly and Association

Freedom of Assembly

The constitution provides for freedom of assembly, and the government generally respected this right in practice. Revised emergency powers regulations, issued in September 2008 and renewed every 30 days thereafter, do not explicitly prohibit public meetings or gatherings.

Trials continued during the year for persons charged with offenses relating to the 2006 riot. As of March (the latest statistics available), of the 303 persons indicted, 107 were convicted, 18 were acquitted, 26 had the charges against them withdrawn, 31 were awaiting trial, three were remitted back to the magistrate's court, and 118 were placed in the adult diversion program, whereby they admitted to the offense and were directed to perform community service for a specified period and maintain good behavior.

Freedom of Association

The constitution provides for freedom of association, and the government generally respected this right in practice.

c. Freedom of Religion

The constitution provides for freedom of religion, and the government generally respected this right in practice. However, the dominant Christian religion shows its influence in a constitutional provision that Sunday is to be "kept holy" and that no business can be conducted "except according to law." Although an exception was made for bakeries, hotels, resorts, and restaurants that are part of the tourism industry, the Sunday prohibition was otherwise enforced strictly for all businesses, regardless of the business owner's religion.

TBC guidelines require that religious programming on Radio Tonga be confined "within the limits of the mainstream Christian tradition." Although the TBC allowed the Church of Jesus Christ of Latter-day Saints and the Baha'i Faith to broadcast their programs on TV Tonga and Radio Tonga, it prohibited discussion of their founders and the basic tenets of their faiths. The government-owned but privately operated newspaper occasionally carried news articles about Baha'i

activities or events, as well as those of other faiths.

There was an unconfirmed report that in May two New Zealand-based Falun Gong practitioners visiting Tonga were questioned by officials about their activities while in the country.

Societal Abuses and Discrimination

There were no reports of societal abuses or discrimination against religious groups, including anti-Semitic acts. There was no known resident Jewish community.

For a more detailed discussion, see the *2009 International Religious Freedom Report* at www.state.gov/g/drl/rls/irf/.

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

The law provides for freedom of movement within the country, foreign travel, emigration, and repatriation, and prior to the declaration of a state of emergency in 2006, the government generally respected these rights in practice. The continuing emergency powers regulations authorize the police and military to restrict free movement in and around a "proclaimed area" of Nuku'alofa, but these restrictions were rarely enforced.

The occasion did not arise during the year for cooperation with the UN High Commissioner for Refugees or other humanitarian organizations in providing protection and assistance to internally displaced persons, refugees, returning refugees, asylum seekers, stateless persons, and other persons of concern.

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

Protection of Refugees

The country is not a party to the 1951 Convention relating to the Status of Refugees and its 1967 Protocol. Its laws do not provide for the granting of asylum or refugee status, and the government has not established a system for providing protection to refugees. In principle the government provided protection against the expulsion or return of refugees to countries where their lives or freedom would be threatened on account of their race, religion, nationality, membership in a particular social group, or political opinion, but no persons were known to have applied for refugee status or temporary protection during the year.

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

Citizens do not have the ability to change their leaders or system of government. The king and 33 hereditary nobles dominated government. The king appoints the prime minister. He also appoints and presides over the Privy Council (called the cabinet when the king or regent is not presiding), which makes major policy decisions. The council is composed of as many as 14 ministers and two regional governors; it includes nobles and commoners, all serving at the king's pleasure.

The unicameral Parliament consists of the cabinet members, nine nobles elected by their peers, and nine representatives elected by the general population. The king appoints the speaker from among the representatives of the nobles. Cabinet members and nobles often voted as a bloc.

In 2007 a tripartite committee of cabinet, nobles', and people's representatives issued a report to Parliament recommending major changes to the political system that would result in a sizable majority of people's representatives in Parliament. Parliament endorsed the committee's report in general but put off implementation of recommended reforms until 2010. On January 5, a five-member Constitutional and Electoral Reform Commission (CEC) was officially established, with a parliamentary mandate to recommend, and draft legislation to implement, political and electoral reforms. On November 5, the CEC submitted its final report and recommendations to the Privy Council and Parliament. By year's end Parliament had debated and endorsed amendments to some of the recommendations.

Elections and Political Participation

Citizens 21 years or older and resident in the country may vote. The April 2008 elections for Parliament's nine people's representatives were deemed generally free and fair and resulted in a strong showing for prodemocracy candidates.

Nobles and cabinet members associated with the royal family have traditionally dominated the Parliament and government. For several decades a democracy movement has been building, and since 2005 three proreform political parties have been registered.

There were no women in the 34-member Parliament. A woman may become queen, but the constitution forbids a woman to inherit hereditary noble titles or become a chief. There was one female government minister.

The single minority cabinet minister resigned in August; there were no other members of minorities in the government.

Section 4 Official Corruption and Government Transparency

The law provides criminal penalties for official corruption. The government generally implemented the law, but officials often engaged in corrupt practices with impunity, and corruption remained a serious problem. In February 2008 the Office of the Auditor General began reporting to Parliament directly, instead of to the prime minister. The Office of the Anti-Corruption Commissioner is empowered to investigate official corruption.

There were unconfirmed reports of government corruption during the year. In November a commission of inquiry into the August 5 sinking of the government-owned ferry MV *Princess Ashika* revealed that cabinet had resolved to purchase the MV *Princess Ashika* before it sought the endorsement of the government's procurement committee. Government preferences appeared to benefit unfairly businesses associated with government officials, nobles, and the royal family. There is no law requiring financial disclosure for public 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.

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.

Government offices include a commission on public relations that investigates and seeks to resolve complaints about the government.

During the year representatives of regional human rights organizations visited the country to conduct training for local counterparts and provide assistance in setting up local human rights organizations.

The government cooperated with international governmental organizations and permitted visits by representatives of the UN and other international bodies; there were some such visits during the year.

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 is punishable by up to 15 years' imprisonment. The law does not recognize spousal rape. The incidence of rape appeared to be infrequent but increasing, although there were no reliable statistics. Rape cases were investigated by the police and prosecuted under the penal code. Police received at least two reports of rape during the year, but complete statistics were not available by year's end; women's rights nongovernmental organizations (NGOs) reported that the number of complaints they received of sexual violence against women was higher.

The police Domestic Violence Unit, together with various NGOs, including the National Center for Women and Children, the Women and Children Crisis Center (a new NGO established in November), and the Salvation Army, conducted public awareness and prevention campaigns against domestic violence. Statistics compiled by the National Center for Women and Children and the Women and Children Crisis Center indicated that 329 persons sought assistance from these organizations during the year. Of these, 76 percent were women, and 15 percent were children under the age of 12 years. Domestic violence was the leading complaint for women, while neglect and physical abuse were the leading reasons for seeking assistance for children. During the year four women were killed in domestic violence incidents. Three of the accused perpetrators were tried and convicted by year's end; two received life sentences, and the third was sentenced to 25 years' imprisonment.

The law does not address domestic violence specifically, but domestic violence can be prosecuted under laws against physical assault. During the year the Police Domestic Violence Unit initiated a "no drop" policy in complaints of domestic assault, and these cases proceed to prosecution in the magistrate's court. The "no drop" policy was introduced because many women were reluctant to press charges against their spouses due to cultural constraints. The police received 459 reports of domestic violence during the year. Following reports of abuse, victims received counseling from Police Domestic Violence Unit officers. Perpetrators were also provided counseling. The 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. The Free Wesleyan Church operated a hotline for women in trouble, and the Salvation Army provided counseling and rehabilitation programs.

Prostitution is not illegal, but activities such as soliciting in a public place, procuring, operating a brothel, and trading in women are criminal offenses. There were reports of women and underage girls engaging in commercial sexual activities.

Sexual harassment is not a crime, but physical sexual assault could be prosecuted as indecent assault. Sexual harassment of women sometimes occurred, based on complaints received by the police's Domestic Violence Unit.

Couples and individuals have the right to decide freely and responsively the number, spacing, and timing of their children. Free information about and access to contraception were provided by public hospitals and health centers and by a regional NGO's clinic. 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. Public hospitals and health centers also provided free obstetric and postpartum care. Women and men received equal access to diagnosis and treatment for sexually transmitted infections, including HIV.

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 or engage in sexual intercourse.

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

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 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. Both offered counseling to women in crisis and also operated safehouses for women and children. 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 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.

There were some reports of child abuse during the year, including eight reports of child battery. The perpetrators in two cases were convicted and fined in the magistrate's court. One person was charged with manslaughter in the death of a four-year-old child; the case was pending at year's end.

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; indecent assault of a child 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 (approximately 53,475) or up to 10 years' imprisonment for individuals, and a fine of up to 250,000 pa'anga (approximately 133,700) for corporations.

Trafficking in Persons

While the law does not specifically address trafficking in persons, violators could be prosecuted under antislavery statutes. There were no confirmed reports that persons were trafficked to, from, within, or through the country. There were anecdotal reports that some nationals of the People's Republic of China working legally and illegally in the country may have been coerced into prostitution or other forced labor. There were reports that members of foreign fishing crews solicited underage girls for commercial sex.

Persons with Disabilities

There are no mandated provisions for services for persons with disabilities. The TRC operated a school for children with disabilities and conducted occasional home visits. There were no complaints of discrimination in employment, education, and provision of other government services.

A Ministry of Education pilot program, which began in 2007, continued during the year to assimilate children with disabilities into primary schools. The queen mother ran a center providing accommodation and meals for adults with disabilities. There were no programs to ensure access to buildings for persons with disabilities, and in practice most buildings were not accessible. There was an NGO advocating on behalf of persons with disabilities.

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 has been legally restricted to citizens since 1978. Despite this policy, the retail sector in many towns was dominated by Chinese nationals, who were also moving 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

Sodomy is illegal, with a maximum penalty of 10 years' imprisonment, but there were no reports of prosecutions directed at lesbian, gay, bisexual, or transgender persons under this provision. Persons who engaged in openly homosexual behavior faced societal discrimination. There were no reports of violence against persons based on sexual orientation or gender identity.

Other Societal Violence or Discrimination

There were no reports of discrimination or violence against persons based on HIV/AIDS status.

Section 7 Worker Rights

a. The Right of Association

Workers gained the right to form unions under the 1964 Trade Union Act, but regulations on the formation of unions were never promulgated, and there were no official unions. An estimated 35 percent of the population were wage earners, of whom approximately 65 percent worked in the agricultural sector. The Friendly Islands Teachers Association and the

Tonga Nurses Association were incorporated under the Incorporated Societies Act; however, they have no formal bargaining rights under the act. The Public Servants Association (PSA) acted as a de facto union representing all government employees.

The Trade Union Act provides workers with the right to strike, but implementing regulations were never formulated. There have been strikes, but none took place during the year.

b. The Right to Organize and Bargain Collectively

The law permits collective bargaining, but there were no implementing regulations, and collective bargaining was not known to take place in practice.

There was no dispute resolution mechanism in place specifically for labor disputes, although persons could take their cases to court. In January 2008 the PSA filed suit against the government claiming unlawful dismissal of the PSA's secretary general from her job at the Agriculture Department in 2007. She was fired after she signed letters to the government on behalf of the PSA asserting breaches by the government of a memorandum of understanding between the government and civil servants who had gone on strike in 2005. The case was still pending at year's end.

Labor laws apply in all sectors of the economy, including the two small export processing zones.

c. Prohibition of Forced or Compulsory Labor

The law prohibits forced or compulsory labor, and there were no reports that such practices occurred among citizens. There were anecdotal reports that some foreign workers may have been coerced into prostitution or other forced labor.

d. Prohibition of Child Labor and Minimum Age for Employment

Although there is no legislation prohibiting child labor, the practice did not exist in the wage economy. According to the National Center for Women and Children and other NGOs, some school-age children were working in the informal sector in traditional family activities such as subsistence farming and fishing.

e. Acceptable Conditions of Work

There is no minimum wage law, although there are government guidelines for wage levels set by the Ministry of Labor, Commerce and Industries. According to the Asian Development Bank, 23 percent of workers in 16 communities surveyed in 2005 earned less than 29 pa'anga (approximately \$16) per week, which did not provide a decent standard of living for a worker and family. Government workers received pay raises during the year, and their salaries generally were sufficient to provide a decent standard of living for a worker and family.

Labor laws and regulations, enforced by the Ministry of Labor, Commerce, and Industries, limited the workweek to 40 hours. The ministry enforced laws and regulations in the wage sector of the economy, particularly on the main island of Tongatapu, but enforcement in the agricultural sector and on the outer islands was less consistent.

Few industries exposed workers to significant danger, and industrial accidents were rare. The government seldom

addressed industrial safety standards, including the right of workers to remove themselves from dangerous work situations.