



2008 Human Rights Reports: Tonga

BUREAU OF DEMOCRACY, HUMAN RIGHTS, AND LABOR

[2008 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 Tupou V, the nobility, and a few prominent commoners. The most recent election for "people's representative" seats in Parliament, held on April 24, 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 the freedom of the media to cover 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.

In remarks made in November opposing the extension of the state of emergency, member of Parliament (MP) Clive Edwards alleged that Tonga Defence Services (TDS) members had beat several persons who were meeting in a private home.

As of year's end, the government had not prosecuted or taken disciplinary action against any police or TDS personnel in response to allegations of security force abuse of persons detained following the 2006 riot.

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.

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 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.

Powers under the state of emergency were reauthorized in September and at year's end were limited to police and military powers to "maintain public order" on the main island of Tongatapu. Somewhat more stringent public order provisions applied to a "proclaimed area" covering parts of Nuku'alofa.

Arrest and 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 donor-funded law center.

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 Court of Appeal, the Supreme Court, the police magistrate's court, a general court, and a court of review for the Inland Revenue Department. The king's Privy Council presides over cases relating to disputes regarding titles of nobility and estate boundaries.

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. Defendants 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 a donor-funded law center provides free legal advice and representation in court. Local lawyers occasionally take 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.

In April the government withdrew a charge of sedition filed against businesswoman 'Ofa Simiki for statements made and actions taken prior to the 2006 riot.

At year's end court dates were not set for the trials of five MPs charged in February 2007 with sedition in relation to speeches they made at political rallies just prior to the 2006 riot.

In June the government filed an application for a contempt of court order against the newspapers Taimi 'o Tonga and Kele'a in connection with articles the papers published relating to deaths resulting from the 2006 riot. The case was still pending at year's end. In July the High Court dismissed sedition charges against broadcast journalist Sangster Saulala, citing insufficient evidence. The charges related to broadcasts by Salala's station in the period leading up to the riot.

Government-controlled media outlets were criticized for exercising self-censorship. An important venue for political campaigning was the government-owned Tonga Broadcasting Corporation (TBC), which permitted candidates to purchase and air prerecorded television programs outlining their policies and positions. In the run-up to the April 24 parliamentary elections, however, the government ordered the TBC to remove a series of paid political broadcasts from its schedule and prohibited TBC staff from hosting any election programs. The TBC's board directed that all political programming be reviewed by TBC Board-appointed censors prior to broadcast.

Media access to parliamentary debates was also restricted. On June 3, 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 were required to wait for the official minutes, usually published several days after Parliament closed.

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.

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 on September 5, do not explicitly prohibit public meetings or gatherings.

Trials continued during the year for persons charged with offenses relating to the 2006 riot. By year's end 191 persons had been convicted and 22 acquitted.

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 newspaper occasionally carried news articles about Baha'i activities or events, as well as those of other faiths.

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 2008 International Religious Freedom Report at www.state.gov/g/drl/irf/rpt.

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. Ongoing emergency powers regulations authorized 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 law does not provide for the granting of asylum or refugee status in accordance with the 1951 UN Convention relating to the Status of Refugees and its 1967 protocol, 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, 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 August 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, with Parliament choosing the prime minister from among its members. The prime minister would choose the cabinet, also from among the members of Parliament. Before adjourning in October 2007, Parliament endorsed the committee's report in general but put off implementation of recommended reforms until 2010. In July Parliament enacted legislation providing for the establishment of a commission to review, recommend, and draft legislation in preparation for parliamentary elections in 2010 under a revised system.

Elections and Political Participation

Citizens 21 years or older and resident in the country may vote. The April 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.

The sole popularly elected woman in the 34-member Parliament lost her seat during the April general elections. 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.

A single cabinet minister constituted the only minority participation in government.

Government Corruption and 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 June the government established an Office of the Anti-Corruption Commissioner empowered to investigate official corruption.

There were some reports of government corruption during the year. The auditor general investigated corruption allegations against the minister for tourism and concluded that the minister had breached public finance management laws. The prime minister did not remove the tourism minister from office. Government preferences appeared to unfairly benefit businesses associated with members of the royal family. In August 2007, during parliamentary debates, it was revealed that royalties due to the government from a business associated with a member of the royal family had gone unpaid for a number of years. In September the company in question settled all payments due to the government, and all government agency agreements with the company were terminated.

There is no law requiring financial disclosure for public officials.

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 4 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 somewhat cooperative and responsive to their views.

Government offices include a commission on public relations that investigates and seeks to resolve complaints about the government, and the Office of the Anti-Corruption Commissioner investigates allegations of corrupt conduct by public officials.

Section 5 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. There were two prosecutions and convictions for rape during the year.

Domestic violence against women seldom was publicized; however, according to local women's groups, it was very common. Domestic violence can be prosecuted under laws against physical assault, but in practice prosecutions were very rare. The police department has a Domestic Violence Unit. The police received 250 reports of domestic violence through the end of November. Following reports of abuse, victims received counseling from Domestic Violence Unit officers, who also issued both oral and written warnings to perpetrators. Perpetrators were also

provided counseling. Police pursued charges against perpetrators if the victim wished to press charges, but many women did not do so due to cultural constraints. The police worked with the National Centre for Women and Children, an NGO, to provide shelter for abused women. The Free Wesleyan Church operated a hot line for women in trouble and, the Salvation Army provided counseling and rehabilitation programs.

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.

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 sometimes occurred, but it was not a major problem.

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 those of governor of the Reserve Bank and permanent representative to the UN.

The National Centre for Women and Children focused on domestic abuse and improving the economic and social conditions of women. It offered counseling to women in crisis and also operated a safehouse for women and children. Another NGO, Ma'a Fafine Moe Famili ("For Women and Families, Inc."), 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

The government was committed to children's rights and welfare, and it provided some funding for children's welfare.

There were some reports of child abuse. There were two convictions for indecent assault of a minor during the year.

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 to assimilate children with disabilities into primary schools continued during the year. 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. An NGO advocating on behalf of persons with disabilities was very active.

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 increasingly dominated by foreigners, particularly Chinese nationals. The Immigration Department of the Ministry of Foreign Affairs attempted to enforce the restrictions in an effort to curb growing illegal immigration. Although some foreigners left as a result of the policy, others moved to nonrestricted sectors of the economy. There were reports of crime and societal discrimination targeted at members of the Chinese minority.

Other Societal Abuses and Discrimination

Sodomy is illegal, but there were no reports of prosecutions under this provision. Persons who engaged in openly homosexual behavior faced societal discrimination.

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

Section 6 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. 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 Unions 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.

On January 7, 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, including by children, 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 Centre for Women and Children, some school-age children were working in the informal sector.

e. Acceptable Conditions of Work

There is no minimum wage law, although there are government guidelines for wage levels. According to the Asian Development Bank, 23 percent of workers in 16 communities surveyed in 2005 earned less than 29 pa'anga (approximately \$13) per person per week, which did not provide a decent standard of living for a worker and family. Government workers received raises in 2006, 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.