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2010 Human Rights Reports: Tonga

BUREAU OF DEMOCRACY, HUMAN RIGHTS, AND LABOR

2010 Country Reports on Human Rights Practices

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The Kingdom of Tonga is a constitutional monarchy with a population of approximately 120,900. Political life is dominated by King Siaosi (George) Tupou V, the nobility, and a few prominent commoners. Parliamentary elections held November 25 were deemed generally free and fair. On December 21, Parliament elected nobles' representative Lord Tu'ivakano as prime minister. A state of emergency declared following a 2006 riot in the capital of Nuku'alofa remained in effect during the year but limited in scope to Nuku'alofa. Security forces reported to civilian authorities.

The king's June replacement of the Judicial Services Commission with a royally appointed lord chancellor for appointing judges raised concerns about the continued independence of the judiciary. The government at times restricted media coverage of certain political topics. Government corruption was a problem, and domestic violence and discrimination against women continued.

The aristocracy-dominated political system was democratized during the year with the November parliamentary elections, in which for the first time a majority of members were popularly elected in accordance with political reforms promulgated in 2009.

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

At year's end the country's four prisons and other detention facilities – located on the main islands of Tongatapu, Vava'u, Ha'apai, and 'Eua – held a total of 159 inmates, including pretrial detainees. Of these, seven were women and 22 were juveniles (defined as under age 20). A breakdown between the number of convicted prisoners and the number of pretrial detainees was not available. There were 103 male and seven female inmates in Tongatapu Prison, four additional prisoners who lived and worked on the prison's animal farm, and one person held in a police cell on Tongatapu. There were 14 inmates on Vava'u, 13 on Ha'apai, and 17 on 'Eua – all male. The maximum prison capacity was 132 persons on Tongatapu, 14 on Vava'u, 13 on Ha'apai, and 30 on 'Eua.

Prisoners had reasonable access to visitors and were permitted religious observance. The authorities permitted prisoners to submit complaints without censorship to the prison officer-in-charge, who then forwarded them to the commissioner of prisons for review and action. 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 clergyman, visited the prisons to hear any prisoner complaints or grievances. Prisoners also are permitted to submit complaints to judicial authorities.

The country does not have an ombudsman who can serve on behalf of prisoners and detainees to consider such matters as alternatives to incarceration for nonviolent offenders to alleviate overcrowding; addressing the status and circumstances of confinement of juvenile offenders; or improving pretrial detention, bail, and recordkeeping procedures to ensure that prisoners do not serve beyond the maximum sentence for the charged offense. However, overcrowding was not a problem during the year, and the authorities maintained a tracking system to ensure that prisoners were not held beyond the maximum sentence for their offense.

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 405 persons. There were no reports of police impunity during the year. Public complaints against the police 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 the community law

center (CLC). However, the CLC did not have a dedicated source of funding during the year and was dependent on donations.

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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 from the British Commonwealth legal tradition.

In June the king announced that the appointment of judges would hereafter be handled by a lord chancellor appointed by the monarch in place of the Judicial Services Commission, which the king disbanded. The lord chancellor also has authority to investigate complaints against judges, which previously rested with the Judicial Services Commission. The change ostensibly was made to insulate judicial appointments from parliamentary influence. Opponents of the change asserted it would compromise the independence of the judiciary.

A number of controversial changes were made in the judiciary during the year. In December 2009 the cabinet reportedly decided not to renew the chief justice's contract; he left office in August. His departure was followed by the contentious departure, also in August, of Acting Chief Justice Warwick Andrew, who claimed he was prevented from completing the remaining one month of his term. The government denied this, stating that Andrew was granted early leave that he had requested. These departures left the judiciary with only one sitting judge and one magistrate until newly appointed Chief Justice Michael Scott began his term in September. Subsequently, two additional magistrates were appointed to the Tongatapu courts to manage a backlog of cases that arose due to the availability of only one sitting magistrate, whose death in September created even more delays in court processes.

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.

In May the government withdrew a charge against member of Parliament Clive Edwards for "speaking seditious words" at a prodemocracy rally in 2006.

Media outlets reported on political developments and high-profile court cases but exercised self-censorship regarding high-profile individuals. Since the political campaigns of 2008, the government-owned Tonga Broadcasting Commission (TBC)'s board has directed that all programming be reviewed by TBC board-appointed censors prior to broadcast.

In December the Ministry of Information ordered the FM 88.1 radio station to cease broadcasting, on the grounds that it was broadcasting without a license. The station had been operating under a license owned by publisher Kalafi Moala, who reportedly withdrew the license after receiving complaints from the ministry about the station's political reporting. The station's owner denied that its reporting was partisan and asserted that the government was attempting to hinder public discussion about the negotiations to form a new government after the November elections.

Media access to parliamentary debates remained restricted; however, the debate minutes were available publicly online a day after the debates. The government lifted these restrictions to allow the media to cover Parliament's election of a new prime minister in December. However, some prodemocracy media complained that their reporters were not invited to the new prime minister's installation ceremony, although other media representatives were invited.

Privately owned media carried reports about internal government changes and policies, and letters to the editor continued to be a favorite venue for citizens to air criticisms and concerns about the country's direction. From time to time, private 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 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 7 percent of the country's inhabitants used the Internet in 2009.

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.

By year's end all court cases involving persons charged with offenses relating to the 2006 riot in Nuku'alofa had been resolved.

Freedom of Association

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

c. Freedom of Religion

For a complete description of religious freedom, please see the *2010 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. The continuing 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 need 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 or the 1967 Protocol relating to the Status of Refugees. 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

During the year the government implemented political reforms approved by Parliament in 2009. The number of popularly elected members of the unicameral Parliament was increased to a majority of 17 out of 26; the remaining nine MPs are nobles elected by their peers. Parliament elects the prime minister, who appoints the cabinet; up to four cabinet members may be selected from outside Parliament. Prior to the reforms, only nine of 30 MPs were popularly elected, with nine elected by the nobles and the remainder appointed by the king; the king also appointed the prime minister and cabinet. Cabinet members and nobles often voted as a bloc.

Although, under the reforms, the majority of MPs are chosen by popular vote, the king retains significant powers, such as that to withhold his assent to laws and to dissolve Parliament.

Elections and Political Participation

Citizens 21 years or older and resident in the country may vote. The most recent parliamentary elections, held November 25, were deemed generally free and fair and resulted in a strong showing for prodemocracy candidates, who won 12 of the 17 popularly elected seats. However, five popularly elected MPs joined with the nine nobles to elect a noble, Lord Tu'ivakano, as prime minister.

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 pro-reform political parties have been registered.

There was one woman in the 30-member Parliament prior to the November election. No women were elected to the new Parliament in November. A woman may become queen, but the constitution forbids a woman to inherit hereditary noble titles or become a chief.

There were no members of 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. Incidents of bribe taking and other forms of corruption in the police force reportedly occurred. Government preferences appeared to benefit unfairly businesses associated with government officials, nobles, and the royal family. There is no law requiring 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.

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, although there were no reliable statistics. Rape cases were investigated by the police and prosecuted under the penal code. Police received two reports of rape during the year. One nongovernmental organization (NGO) reported receiving three reports of rape.

The Police Domestic Violence Unit, together with various NGOs, including the National Center for Women and Children, the Women and Children Crisis Center, and the Salvation Army, conducted public awareness and prevention campaigns against domestic violence. Statistics compiled by the National Center for Women and Children and the Women and Children Crisis Center indicated that more than 600 persons sought assistance from these organizations during the year. Of these, 79 percent were women, and 14 percent were children. Domestic violence was the leading complaint for women, while neglect and physical abuse were the leading reasons for seeking assistance for children.

The law does not address domestic violence specifically, but domestic violence can be prosecuted under laws against physical assault. The Police Domestic Violence Unit has a "no drop" policy in complaints of domestic assault, and these cases proceed to prosecution in the Magistrate's Court. The no drop policy was introduced in 2009 because many women were reluctant to press charges against their spouses due to cultural constraints. Police received 174 domestic assault reports 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.

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

Couples and individuals have the right to decide freely and responsibly the number, spacing, and timing of their children. Public hospitals and health centers and a regional NGO's clinic provided free information about and access to contraception. According to indicators published by the Population Research Bureau (PRB), an estimated 23 percent of married women ages 15-49 used modern contraceptive methods. Under a Ministry of Health policy, a woman is not permitted to undergo a tubal ligation at a public hospital without the consent of her husband or, in his absence, her male next of kin. Public hospitals and health centers provided free prenatal, obstetric, and postpartum care. According to PRB indicators, skilled health personnel attended an estimated 95 percent of births. According to Ministry of Health data, in 2007 (the latest figure available) the estimated maternal mortality ratio was 37 deaths per 100,000 live births. 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.

There were no reports of discrimination against women compared with men in the terms of employment, including types of work, hours worked, or pay. 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 the Women and Children Crisis Center operated a safehouse 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.

According to Police Domestic Violence Unit statistics, during the year there were 22 reports of assaults on children up to age 18, two of which involved children age 10 or younger. One person was sentenced to life imprisonment for

manslaughter in the 2009 death of a four-year-old child, but in October the Appeals Court ordered a retrial on grounds of miscarriage of justice. The retrial was pending before the Supreme Court 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.

The country is not a party to the 1980 Hague Convention on the Civil Aspects of International Child Abduction. For information on international parental abduction, please see the Department of State's annual report on compliance at http://travel.state.gov/abduction/resources/congressreport/congressreport_4308.html.

Anti-Semitism

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

Trafficking in Persons

In 2009 there were no confirmed reports that persons were trafficked to, from, or within the country.

Persons with Disabilities

There are no legally mandated provisions for services for persons with physical, sensory, intellectual, or mental disabilities. There were no formal complaints of discrimination in employment, education, and provision of other government services. However, there were no programs to ensure access to buildings for persons with disabilities, and in practice most buildings were not accessible. There also were no programs to ensure access to communications and information for persons with disabilities. The Tonga Red Cross Society operated a school for children with disabilities and conducted occasional home visits. 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 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 also moved into unrestricted sectors of the economy. There were reports of crime and societal discrimination targeted at members of the Chinese minority.

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

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 an out-of-court settlement was recorded in the PSA's suit against the government relating to the firing of the PSA secretary from her government job in 2007; the details were not made public.

There are no special laws or exemptions from regular labor laws in 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 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 in 2009, 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. Workers have the right to remove themselves from situations that endangered health or safety without jeopardy to their employment; however, the authorities seldom enforced this right.

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