

TONGA 2013 HUMAN RIGHTS REPORT

EXECUTIVE SUMMARY

The Kingdom of Tonga is a constitutional monarchy. In March 2012 King Siaosi Tupou VI succeeded his older brother to the throne following the former king's death. The king, popularly elected parliamentary leaders, the nobility and their representatives, prominent commoners, and democratic reform figures dominated political life. The most recent parliamentary elections, held in November 2010, were deemed generally free and fair, and in December 2010 parliament elected a nobles' representative, Lord Tu'ivakano, as prime minister. Civilian authorities maintained effective control over the security forces. Security forces committed human rights abuses during the year.

Domestic violence, discrimination against women, and government corruption were the most prevalent human rights problems.

The privileged status enjoyed by the royal family and nobility contributed to a lack of government transparency and socioeconomic mobility.

The government took steps to prosecute officials who committed abuses.

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

a. Arbitrary or Unlawful Deprivation of Life

There were no cases of arbitrary or unlawful deprivation of life during the year. In August 2012 police allegedly assaulted a New Zealand citizen of Tongan descent in his cell. The man, detained for drunkenness, subsequently died. Authorities charged five police officers and a civilian, who were awaiting trial in the case at year's end. Authorities charged three off-duty police officers with manslaughter in the November 2012 death of a U.S. citizen. The court acquitted one officer in January and released the two remaining officers on bail. The case was awaiting trial at year's end.

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, but there were complaints against police officers for violence and related misconduct. As of October authorities suspended 15 police officers from duty during investigations and terminated the appointments of a further six police officers.

According to media reports, Hu'atolitoli Prison guards on September 6 beat an inmate, 'Ulu'ave, until he fell unconscious. He allegedly fled the prison later on September 6 but intended only a short visit home. His father returned him to prison the same evening. The guards allegedly beat him further after his return. Tonga Prison Commissioner Sione Falemanu acknowledged to the media that the beating did take place but not to the extent reported. 'Ulu'ave originally planned to sue the guards but changed his mind after the guards promised him "good behavior" credit, which would grant him special privileges including visiting his family on the weekend. There have been no further developments in this case.

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.

Physical Conditions: As of September the country's four prisons and other detention facilities held 163 inmates, including six women. There were 19 juveniles and four prisoners with disabilities. Authorities held nonviolent prisoners with disabilities at a hospital. The official prison capacity was 200. Authorities held pretrial detainees at police headquarters in Nuku'alofa and Hu'atolitoli prison. As of July there were 11 pretrial detainees at Hu'atolitoli prison and 372 pretrial detainees (360 men and 12 women) at the police headquarters. During the year no deaths occurred in the pretrial detention centers or prisons. Prisoners had access to potable water.

Administration: The country does not have an ombudsman to serve on behalf of prisoners and detainees. Authorities maintained a tracking system to ensure that prisoners were not held beyond the maximum sentence for their offense. Prisoners had access to visitors and permission for religious observance. Authorities permitted prisoners to submit complaints without censorship to the prison custodial division, which then forwarded them to the commissioner of prisons for review and

action. Prison officials also permit prisoners to submit complaints to judicial authorities.

Independent Monitoring: At least once every quarter, a group of three to five persons called “visiting officers,” chosen by the cabinet and normally including a police magistrate, a physician, and a member of the clergy, visited the prisons to hear any prisoner complaints or grievances.

d. Arbitrary Arrest or Detention

The constitution prohibits arbitrary arrest and detention, and the government generally observed these prohibitions.

Role of the Police and Security Apparatus

The national police force, under the minister of police and prisons, maintains internal security. The Tonga Defense Services (TDS), under the minister of defense (a position held by the prime minister during the year), is responsible for external security. In emergency situations the TDS also shares domestic security duties with the police. The king is the commander in chief of the TDS. Civilian authorities maintained control over the TDS and police, and the government has effective mechanisms to investigate and punish security force abuse and corruption. There were no reports of impunity involving the security forces during the year. Complaints against police are referred to the police employment committee, which determines the severity of the complaint and refers it to the police board. The committee may take disciplinary action against police officers, but refers serious breaches to the board. The board has the power to determine the action to be taken in response to a serious breach of discipline, including dismissal from the force. Entry-level police training included training on corruption, ethics, transparency, and human rights.

Arrest Procedures and Treatment of Detainees

The law provides for the right to judicial determination of the legality of arrest, and this was observed 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 nongovernmental

Community Law Center (CLC), but the CLC did not have a dedicated source of funding during the year and depended on donations.

e. Denial of Fair Public Trial

The constitution provides for an independent judiciary, and the government generally respected judicial independence, although the system was modified in 2010 to increase the king's judicial appointment power. The lord chancellor, appointed by the king, appoints judges and also has authority to investigate complaints against judges.

Trial Procedures

The constitution provides for the right to a fair 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. Trials are public, and defendants have the option to request a seven-member jury. Defendants are presumed innocent and cannot be compelled to testify or confess guilt. They are informed promptly and in detail of the charges against them, including free interpretation if necessary. They have access to government-held evidence and may present witnesses and evidence, confront witnesses against them, and appeal convictions. They have the right to be present at their trials, consult with an attorney in a timely manner, and have adequate time and facilities to prepare a defense. Public defenders are not provided, but the CLC provided free legal advice and representation in court. Local lawyers occasionally took pro bono cases. The law extends these rights to all citizens without discrimination.

Political Prisoners and Detainees

There were no reports of political prisoners or detainees.

Civil Judicial Procedures and Remedies

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.

Section 2. Respect for Civil Liberties, Including:

a. Freedom of Speech and Press

The constitution provides for freedom of speech and press, and in contrast to previous years, the government generally respected these rights. An independent press, an effective judiciary, and a functioning democratic political system combined to promote freedom of speech and press. Both private and publicly owned media had access to parliamentary debates. The debate minutes were available publicly online within days of the debates.

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

Censorship or Content Restrictions: Media outlets reported on political developments and high-profile court cases but exercised self-censorship regarding high-profile individuals. Authorities sometimes charged with libel and fined media that reported unfavorable stories about government or high-profile individuals. For example, in June the court fined the *Kele'a* newspaper 250,000 pa'anga (\$145,500) after it published an article entitled "The Law is Paralyzed when Dealing with the Leaders." The case was pending appeal as of September. The board of the Tonga Broadcasting Commission (TBC), a government-owned company, directed that all TBC programming be reviewed by board-appointed censors prior to broadcast.

Libel Laws/National Security: As in previous years, there were libel judgments against media organizations.

Internet Freedom

There were no government restrictions on access to the internet or credible reports that the government monitored e-mail or internet chat rooms without appropriate legal authority. Workplaces and internet cafes provided internet access, but most homes did not have such access. In August the country connected to a submarine cable system providing high speed internet connections. According to the World Bank, 35 percent of citizens had access to the internet.

Academic Freedom and Cultural Events

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

b. Freedom of Peaceful Assembly and Association

The constitution provides for freedom 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/j/drl/irf/rpt.

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

The law provides for freedom of internal movement, foreign travel, emigration, and repatriation and the government generally respected these rights. The government cooperated with the Office of the United Nations High Commissioner for Refugees (UNHCR) and other humanitarian organizations in providing protection and assistance to refugees and other persons of concern.

Exile: The law does not prohibit forced exile, but the government did not employ it.

Protection of Refugees

Access to Asylum: The country's laws do not provide for the formal granting of asylum or refugee status. The principal immigration officer has wide discretionary powers under immigration laws, however, and may allow noncitizens to remain in the country. Officials worked with the international community and the UNHCR to provide assistance to a UNHCR-designated refugee in the country awaiting resettlement. The case remained pending at year's end.

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

The constitution and law provide citizens the right to change their government peacefully, and citizens exercised this right through periodic, free, and fair elections based on universal suffrage.

Elections and Political Participation

Recent Elections: 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; they then also are seated in parliament during their tenure in the cabinet. Observers deemed the most recent parliamentary elections in November 2010 to be generally free and fair.

The king retains significant powers, such as those to withhold his assent to laws and dissolve parliament.

Political Parties: Nobles and cabinet members associated with the royal family traditionally dominated parliament and government. For several decades a democracy movement has been building, and since 2005 three pro-reform political parties have been registered. The most powerful prodemocracy party is the opposition Democratic Party of the Friendly Isles.

Participation of Women and Minorities: There were no women elected to parliament. One woman joined the government and parliament by direct appointment to the cabinet. A woman may become queen, but the constitution forbids women from inheriting hereditary noble titles or becoming chiefs.

There were no members of minority ethnic groups in the government or parliament.

Section 4. Corruption and Lack of Transparency in Government

The law provides criminal penalties for official corruption; however, the government did not implement the law effectively, and officials sometimes engaged in corrupt practices with impunity. There were some reports of government corruption during the year.

Corruption: In August the deputy speaker of the house resigned in the wake of an illegal firearms scandal, in contrast to other government employees who maintained their positions during and after similar inquiries or investigations in previous years. 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. The royal family continued to exert significant influence over public finances. The Office of the Auditor General reports directly to parliament. The Office of the

Anti-Corruption Commissioner is empowered to investigate official corruption. They did actively collaborate with civil society; however, they did not operate effectively or independently and were not sufficiently resourced.

Whistleblower Protection: The law does not provide protection to public and private employees for making internal disclosures or lawful public disclosures of evidence of illegality.

Financial Disclosure: There is no law requiring income and asset disclosure by appointed and elected officials.

Public Access to Information: The law does not specifically allow for public access to government information, and such access was a problem, especially when the government deemed the information sensitive. The Ministry of Information and Communication did not implement the Freedom of Information Policy, which gives persons the right to access information on the roles and operations of each workplace in the public sector.

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 Human Rights Bodies: The government has an independent commission on public relations that investigates and seeks to resolve complaints about the government.

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

The constitution prohibits general discrimination, but the government did not effectively enforce this provision, and the law confirms the special status of members of the royal family and the nobility. While social, cultural, and economic facilities were available to all citizens regardless of race and religion, members of the hereditary nobility had substantial advantages, including control over most land and a generally privileged status.

The law provides for the unequal treatment of women.

Women

Rape and Domestic Violence: Rape is punishable by up to 15 years' imprisonment. The law recognizes spousal rape. The incidence of rape appeared to be infrequent, although there were no reliable statistics. Police investigate reported rape cases, which are then prosecuted under the law. As of July police reported one rape case. Nongovernmental organizations (NGOs) often report a higher incidence of rape than police report. As of July the Women and Children Crisis Center reported five rape cases. The Family Law passed by parliament in September, assented to by the king in November, and scheduled to come into force in mid-2014, will provide greater protection from domestic violence, clarify the roles of the police, and introduce protection orders.

The law does not address domestic violence specifically, but it 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 magistrates' courts. The unit reported 153 cases during the year. Following reports of abuse, the unit's officers counseled victims. A male officer also counseled perpetrators. 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, and girls and boys under age 14. Both centers had a safe house for victims. The Free Wesleyan Church operated a hotline for women in trouble, and the Salvation Army provided counseling and rehabilitation programs.

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. As of July statistics compiled by the Women and Children Crisis Center indicated that 248 persons, including 148 women, 21 men, and 79 children, received assistance from the center during the year.

Sexual Harassment: Sexual harassment is not a crime under the law, but physical sexual assault can be prosecuted as indecent assault. Complaints received by the police domestic violence unit indicated that sexual harassment of women sometimes occurred. As of July there was one report of sexual harassment from the Women and Children Crisis Center.

Reproductive Rights: Couples and individuals have the right to decide freely and responsibly the number, spacing, and timing of their children. Public hospitals, health centers, and several local and international NGOs provided free information

about and access to contraception. Under a Ministry of Health policy, a woman is not permitted to undergo a tubal ligation at a public hospital without the consent of her husband or, in his absence, her male next of kin. Spousal consent is not required for men to undergo a vasectomy. Public hospitals and health centers provide free prenatal, obstetric, and postpartum care, although many pregnant women reportedly do not seek these services and availability of these services is reduced in the outer islands. A high maternal mortality rate of 110 per 100,000 births is anecdotally attributed to this trend. According to data published by the World Health Organization, skilled health personnel attend 99 percent of births.

Discrimination: Inheritance laws, especially those concerned with land, discriminate against women. Women can lease land, but inheritance rights only 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 and remains celibate. Both the inheritance laws and the land rights laws increased economic discrimination that women experienced in terms of their ability to access credit and own and operate businesses.

Women participated in the work force at a lower rate than that of their male counterparts (63 percent for men compared with 42 percent for women). As of 2003 (latest available data) average weekly earnings were higher for men: 127 pa'anga (\$74) compared with 112 pa'anga (\$65) for women. 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 the minister of education.

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

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. 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 Registration: Birth in the country does not confer citizenship. Citizenship is derived from one's parents or from the citizen parent if only one parent is a citizen. The law requires births to be registered within three weeks, and this was usually done.

Education: Education is compulsory and free for all children between the ages of six and 14.

Child Abuse: According to police domestic violence unit statistics, as of September there were four reports of physical assault on female children (up to age 20), including one alleged murder of a female child by her mother and stepfather. The court initiated prosecutions in the four cases and all remained pending trial at year's end. There were no reported cases of assaults on male children.

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

Sexual Exploitation of Children: 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, or indecent assault of a child under age 16, which 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 (\$58,200) or up to 10 years' imprisonment for individuals and a fine of up to 250,000 pa'anga (\$145,500) for corporations. Authorities generally enforced these laws when cases were reported. There were isolated reports of children being subjected to domestic sex trafficking.

International Child Abductions: The country is not a party to the 1980 Hague Convention on the Civil Aspects of International Child Abduction.

Anti-Semitism

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

Trafficking in Persons

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

Persons with Disabilities

No laws specifically prohibit discrimination against persons with physical, sensory, intellectual, or mental disabilities, and there are no legally mandated provisions for services for them. There were no programs to ensure access to buildings for persons with disabilities, and most buildings were not accessible. There also were no programs to ensure access to communications and information for persons with disabilities. The Tonga Red Cross Society (TRCS) operated a school for children with disabilities and conducted occasional home visits. A program of the Ministry of Education, Women, and Culture to assimilate children with disabilities into primary schools continued during the year. Many school buildings, however, were not accessible to students with physical disabilities, and attendance rates of children with disabilities at all educational levels were lower than those of students without disabilities. It was possible for some children with disabilities to attend regular schools, depending on the nature and degree of the child's disability, but children with more severe disabilities generally attended the TRCS-run school.

An NGO advocated on behalf of persons with disabilities, but there was no specific government agency with responsibility for protecting the rights of persons with disabilities. The Asian Development Bank funded a pilot program implemented by Ma'a Fafine mo e Famili (For Women and Family) to provide caregiving services for children and senior citizens with disabilities.

National/Racial/Ethnic Minorities

According to the Ministry of Labor, Commerce, and Industries, the law restricts ownership and operation of food retail stores in the country to citizens. Despite this policy Chinese nationals dominated the retail sector in many towns. They also moved into unrestricted sectors of the economy. There were reports of crime and societal discrimination targeted at members of the Chinese minority.

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

Under the law "sodomy with another person" is a crime, with a maximum penalty of 10 years' imprisonment, but there were no reports of prosecutions under this provision for consensual sexual conduct between adults, regardless of the gender

of the parties. Society tolerated a subculture of transgender dress and behavior, and a prominent NGO's annual festival highlighted transgender identities. There were no reports of violence against persons based on sexual orientation or gender identity, but social stigma or intimidation may have prevented incidents of discrimination or violence from being reported.

Other Societal Violence or Discrimination

There were no reports of discrimination or violence against persons based on HIV/AIDS status, but social stigma or intimidation may have prevented incidents of discrimination or violence from being reported.

Section 7. Worker Rights

a. Freedom of Association and the Right to Collective Bargaining

The country has no formalized labor code. Workers gained the right to form unions under the 1964 Trade Union Act but the government did not promulgate regulations on the formation of unions, collective bargaining, or the right to strike, and no unions formed. There is no law specifically prohibiting antiunion discrimination or providing for reinstatement of workers fired for union activity.

There were no formally registered unions, although a number of workers' organizations existed. The Friendly Islands Teachers Association and the Tonga Nurses Association were incorporated under the Incorporated Societies Act, while the Friendly Island Seafarer's Union Incorporated was affiliated with the global union federation ITF. None have formal bargaining rights under the act. The Public Service Association acted as a de facto union representing all government employees. There have been strikes in the past, but none took place during the year.

Collective bargaining was not known to take place. There were no known reports of antiunion or anti-association discrimination during the year. There was no dispute resolution mechanism in place specifically for labor disputes, although persons could take their cases to court.

b. Prohibition of Forced or Compulsory Labor

The law prohibits forced or compulsory labor, and for human trafficking, including forced labor, prescribes up to 25 years imprisonment, which is generally

considered sufficiently deterrent. There were some anecdotal reports of forced labor among men, women, and children.

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

c. Prohibition of Child Labor and Minimum Age for Employment

Although there is no legislation prohibiting child labor, there were no reports that child labor existed in the wage economy. According to the National Center for Women and Children and other NGOs, some school-age children worked in the informal sector in traditional family activities such as subsistence farming and fishing. There were also reports that some children were subjected to commercial sexual exploitation (see section 6, Children) and involuntary domestic servitude.

Also see the Department of Labor's *Findings on the Worst Forms of Child Labor* at www.dol.gov/ilab/programs/ocft/tda.htm.

d. Acceptable Conditions of Work

There is no minimum wage law, although the Ministry of Commerce, Tourism, and Labor set guidelines for wage levels. Data from the 2009 household income and expenditure survey (the latest available) indicated that 3.1 percent of the population lived in absolute poverty and 22.5 percent lived below the basic needs poverty line. While the latter group did not live in absolute poverty, they struggled to meet costs like education, transport, and utility bills.

Heads of government departments have the discretion to approve annual leave once a government employee has worked for one calendar year. Government employees are entitled to paid annual holidays.

Labor regulations limit the workweek to 40 hours. There are no laws mandating premium pay for overtime or prohibiting excessive compulsory overtime. Government employees were either paid for overtime, if overtime claims fell within their employing ministry's budget, or granted compensatory annual leave.

The Ministry of Commerce, Tourism, and Labor is responsible for enforcing labor laws and regulations in the wage sector of the economy, but with only five officers in the ministry, enforcement of regulations was inconsistent. The law stipulates specific occupational health and safety standards for each sector, e.g. fisheries,

agriculture, etc., and the Ministry of Health enforced these standards during the year.

Few industries exposed workers to significant danger, and reports of industrial accidents were rare.