

# SAMOA

## EXECUTIVE SUMMARY

Samoa is a constitutional parliamentary democracy that incorporates traditional practices into its governmental system. Executive authority is vested in Head of State Tui Atua Tupua Tamasese Efi, elected by parliament in 2007. The unicameral parliament, elected by universal suffrage, is composed of the heads of extended families (matai). The most recent parliamentary elections were held in March and were marred by charges of bribery, treating, and gifting during the campaigns. Security forces reported to civilian authorities.

The principal human rights problems were poor prison conditions and domestic violence against women.

Other human rights problems included police abuse, abuse of children, and discrimination against women and non-matai.

The government took steps to prosecute officials who committed abuses, whether in the security services or elsewhere in the government.

### **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 constitution prohibits such practices, and the government generally observed these prohibitions in practice. However, there were some allegations of police abuses.

Two police officers were charged with inflicting bodily harm after a woman alleged she was assaulted and beaten with a stick by female officers while being questioned in January. In November the two officers were convicted. One was sentenced to two years' imprisonment. The second did not receive a prison sentence but was discharged from the police force.

In August the Supreme Court ordered the government to pay restitution and damages of WST\$103,048 (\$46,004) to a Nigerian national in a lawsuit claiming compensation for assault, battery, and false imprisonment that occurred in January. While in police custody, the Nigerian national was assaulted three times for refusing to depart on an ordered deportation flight. He had refused to board the flight after claiming police and immigration officials did not return his passport and bankbook, which were lost during investigations.

### **Prison and Detention Center Conditions**

Prison conditions improved but overall remained below international standards. Although the government built new facilities and improved cell conditions, these actions were insufficient to provide for the increasing prison population. There were a total of approximately 427 inmates in the prison system, including 28 women and 37 juveniles. The Tafaigata men's prison, the country's most congested, had 23 cells of various sizes, including eight century-old concrete cells that measured approximately 30 feet by 30 feet and held 26 to 30 inmates each. Only basic provisions were made with respect to food, water (including potable water), and sanitation. Cell lighting and ventilation remained poor; lights remained on only from dusk until 9 p.m. All cells had one toilet and one shower facility each, which were shared communally. There were approximately 290 inmates and another 45 held separately in three holding cells awaiting trial.

The separate Tafaigata women's prison had five cells that were approximately 15 feet by nine feet, and each held four to six inmates. There was also one separate holding cell for female inmates awaiting trial and one security cell. Physical conditions, including ventilation and sanitation, generally were better in the women's prison than in the men's prison. There were 28 inmates at the women's facility.

Juveniles (under 21 years) were housed at the Olomanu Juvenile Center, where physical conditions generally were better than in adult facilities. The 37 juveniles were housed in three separate homes and lived as a community in a 300-acre compound.

At the Tafaigata men's prison five new cells were built to hold at least 10 inmates. In July the Vaiaata Corrections Facility completed refurbishment of two homes that were used as communal holding facilities for the 27 inmates.

Prisoners were permitted escorted hospital visits for medical checks as necessary. A room at the police officers' headquarters served as a medical clinic, but no doctor or nurse was assigned to the facility.

Prisoners at all facilities including the juvenile facility are required to do manual labor approximately 40 hours per week. This labor generally consists of agricultural work and cooking to provide food for the inmates and prison staff. The government permitted family members and church representatives to visit prisons weekly. This was often on Sundays, when families were allowed to bring food parcels and clothing for inmates.

Overnight detainees were held at two holding cells at police headquarters in Apia and one cell at Tuasivi. The cells had good lighting, sanitation, and ventilation.

Prisoners and detainees were permitted religious observance. Authorities permitted prisoners and detainees to submit complaints to judicial authorities and request investigation of allegations of inhumane conditions, and authorities investigated such allegations and documented the results in a publicly accessible manner. The government investigated and monitored prison and detention center conditions.

The government permitted monitoring visits by independent human rights observers, including the Red Cross and other diplomatic missions. The Office of the Ombudsman is legally mandated to receive and investigate complaints of prisoners and detainees on issues of inhumane overcrowding; status and circumstances of juvenile offenders; and improvement of pretrial detention, bail, and recordkeeping procedures. The Ombudsman's Office received no complaints or reports by prisoners during the year. Prisoners also could lodge complaints with the Professional Standards Unit (PSU) within the Police Department. The PSU received approximately three to five complaints during the year. Most prisoner complaints were lodged with the PSU because many inmates were not aware they could file complaints with the Ombudsman's Office.

#### **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 Samoan Police Force (SPF) maintains internal security. Enforcement of rules and security within individual villages is vested in the fono (council of matai). The country has no standing military force. Civilian authorities maintained effective control over the SPF, and the government has effective mechanisms to investigate and punish abuse and corruption. There were no reports of impunity involving the SPF during the year. A lack of resources and capacity-building efforts limited police effectiveness.

### **Arrest Procedures and Treatment While in Detention**

The Supreme Court issues arrest warrants based on compelling evidence. The law provides for the right to a prompt judicial determination regarding the legality of detention, and the authorities generally respected this right in practice. Detainees were informed within 24 hours of the charges against them or they were released. There was a functioning bail system. Detainees were allowed prompt access to a lawyer of their choice. The government provides a lawyer for indigent detainees upon request at court.

#### **e. Denial of Fair Public Trial**

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

Due to staff shortages, some Supreme Court and district court judges faced a backlog of pending cases. Pretrial detainees at the Taifagata compound were on average detained for six months or more.

### **Trial Procedures**

The constitution provides for the right to a fair trial, and an independent judiciary generally enforced this right. A trial judge examines evidence and determines if there are grounds to proceed. Defendants have the presumption of innocence. Trials are public except for trials of juveniles, which only immediate family members may attend. Juries (also known as assessors) are used only for the most serious offenses, such as murder, manslaughter, and rape. Defendants have the

right to be present and to timely consultation with an attorney, at public expense if required. Defendants may confront witnesses and present witnesses and evidence on their own behalf. Defendants and their attorneys have access to government-held evidence, and defendants have the right to appeal a verdict.

Many civil and criminal matters were handled by village fono, which varied considerably in their decision-making styles and the number of matai involved in the decisions. The Village Fono Act recognizes the decisions of the fono and provides for limited appeal to the Lands and Titles Court and the Supreme Court. The nature and severity of the dispute determine which court receives an appeal. A further appeal may be made to the Court of Appeal. The Supreme Court has ruled that the fono may not infringe upon villagers' freedom of religion, speech, assembly, or association. The government began a review of the Village Fono Act to determine whether it gives the fono excessive authority to limit individual rights under a broadly defined "public order" exception. In September the government consulted villages nationwide on this question, but no conclusions were reached by year's end.

### **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, including access to a court to bring lawsuits seeking damages for, or cessation of, human rights violations.

#### **f. Arbitrary Interference with Privacy, Family, Home, or Correspondence**

The laws prohibit such actions, and the government generally respected these prohibitions in practice. However, there is little privacy in villages, where there can be substantial societal pressure on residents to grant village officials access without a warrant. There were reports of some village fonos having banished individuals or families from villages (see section 2.d.).

## **Section 2. Respect for Civil Liberties, Including:**

### **a. Freedom of Speech and Press**

## **Status of Freedom of Speech and Press**

The law provides for freedom of speech and press, and the government generally respected these rights in practice. An independent press, an effective judiciary, and a functioning political system combined to ensure freedom of speech and press. The law stipulates imprisonment for any journalist who, despite a court order, refuses to reveal a confidential source upon request from a member of the public. However, there has been no court case invoking this law.

## **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. Individuals and groups could engage in the expression of views via the Internet, including by e-mail.

## **Academic Freedom and Cultural Events**

The government generally did not restrict 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 in practice.

### **c. Freedom of Religion**

See the Department of State's *International Religious Freedom Report* at [www.state.gov/j/drl/irf/rpt](http://www.state.gov/j/drl/irf/rpt).

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

The constitution provides for freedom of movement within the country, foreign travel, emigration, and repatriation, and the government generally respected these rights in practice. However, traditional law governs villages, and village fono regularly banned citizens from village activities or banished citizens from the village for failing to conform to village laws or obey fono rulings. Cases of village banishment were rarely made public. Of those cases that became known during the year, reasons for banishment included murder, rape, adultery, and unauthorized

claims to land and matai title. There are also reports of villages banning religious activities of villagers who do not belong to the “designated” village faith. In some cases civil courts overruled banishment orders. Some banished persons were accepted back into the village after performing a traditional apology ceremony.

### **Protection of Refugees**

Access to Asylum: The country’s laws provide for the granting of refugee status, but the government has not established a system for providing protection to refugees. No such requests arose during the year.

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

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

### **Elections and Political Participation**

Recent Elections: General elections were held in March and generally considered fair. The Human Rights Protection Party retained government for the seventh consecutive term. For the first time in the country’s independent history, a second party, the Tautua Samoa Party, received enough votes to form an official opposition. Following the elections eight electoral petitions were filed on various grounds of bribery, treating, and gifting during a campaign. Of the eight electoral petitions submitted to the Supreme Court, one was withdrawn, three were dismissed, and four resulted in orders to conduct by-elections as the four winning candidates were found guilty of various charges of bribery, treating and gifting during a campaign. All by-elections took place in July.

Political Parties: General election electoral amendments restricted some members of the opposition from registering as candidates. The amendments required candidates to obtain the signature and approval of a government-paid village representative, mayor, or church minister in their respective candidate applications. Two opposition candidates were refused these approvals when the village fonos agreed to have only one candidate run, waiving the need for elections. On appeal the Supreme Court upheld the electoral amendments.

While the constitution gives all citizens above age 21 the right to vote and run for office, by social custom candidates for 47 of the 49 seats in parliament are drawn from the approximately 30,000 matai, who are selected by family agreement. Although both men and women may become matai, only 8 percent were women. Matai control local governments through the village fono, and their titles are determined by appointment rather than direct election.

Participation of Women and Minorities: Despite various government, nongovernmental organization (NGO) and political party initiatives to increase female candidate participation in the general elections, only two women were elected to the 49-member parliament: one was named minister of justice and the other associate minister of women, community, and social development. One woman served as head of a constitutional office, one woman as governor of the central bank, five women as chief executive officers of government ministries, and six women as general managers of government corporations.

The political rights of citizens who are not of ethnic Samoan heritage are addressed by reserving two parliamentary seats for at-large members of parliament, known as “individual voters” seats. One at-large cabinet minister and parliamentarian was of mixed European-Samoan heritage. Citizens of mixed European-Samoan or Chinese-Samoan heritage were well represented in the civil service.

#### **Section 4. Official Corruption and Government Transparency**

The law provides criminal penalties for official corruption, and the government generally implemented the law effectively. Penalties ranged from several months to several years of imprisonment if convicted. There were isolated reports of government corruption during the year.

In July the cabinet ordered a performance audit of the Electricity Power Corporation as well as the suspension of two senior management officials and the nonrenewal of the contract of the then general manager. The cabinet order came after revelations regarding large payments made as cash gifts to various villages, vendors, and police officers. The audit revealed many questionable purchases, unauthorized bonuses, and other unaccounted-for monies.

Although public officials were not subject to financial disclosure laws, such disclosure was encouraged by codes of ethics applicable to boards of directors of government-owned corporations. The law provides for an ombudsman to investigate complaints against government agencies, officials, or employees,

including allegations of corruption. The ombudsman may require the government to provide information relating to a complaint.

By law government information is subject to disclosure in civil proceedings, unless the information is considered privileged or its disclosure would harm the public interest. In the case of other information requests, petitioners had to navigate a cumbersome bureaucratic process, and consequently information was not always obtainable in a timely manner.

### **Section 5. Governmental Attitude Regarding International and Nongovernmental Investigation of Alleged Violations of Human Rights**

A number of domestic and international human rights groups generally operated without government restriction, investigating and publishing their findings on human rights cases. Government officials were cooperative and responsive to their views.

Government Human Rights Bodies: The Office of the Ombudsman was generally considered effective and operated free from government or political party interference. The government usually adopted its recommendations.

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

The constitution prohibits discrimination based on race, gender, disability, language, or social status, and the government generally respected these provisions in practice. However, politics and culture reflected a heritage of matai privilege and power, and members of certain families of high traditional status possessed some advantages.

#### **Women**

Rape and Domestic Violence: Rape is illegal, but there is no legal provision against spousal rape. The penalties for rape range from two years' to life imprisonment, but a life sentence has never been imposed. Many cases of rape went unreported because common societal attitudes discouraged such reporting. In recent years, however, authorities noted a rise in the number of reported cases of rape. This appeared to be a result of efforts by government ministries and local NGOs to increase awareness of the problem and the need to report rape cases to police. Rape cases that reached the courts were treated seriously, and the conviction rate was generally high.

The constitution prohibits abuse of women, but common societal attitudes tolerated their physical abuse within the home. Such abuse was common and typically went unreported due to social pressure and fear of reprisal. Village fono typically punished domestic violence offenders, but only if the abuse was considered extreme (that is, visible signs of physical abuse). Village religious leaders also were permitted to intervene in domestic disputes. When police received complaints from abused women, the government investigated and punished the offender, including by imprisonment. Domestic violence is charged as common criminal assault, with penalties ranging from several months to one year in prison. The government did not keep statistics specifically on domestic abuse but acknowledged the problem as one of considerable concern. The Ministry of Police has a nine-person Domestic Violence Unit, which worked in collaboration with NGOs that combated domestic abuse. NGO services for abused women included public antiviolence awareness programs, confidential hotlines, in-person counseling and other support, and shelters.

Sexual Harassment: There is no law specifically prohibiting sexual harassment, and there were no reliable statistics concerning its extent. It likely was underreported, due to the lack of sexual harassment legislation and a cultural constraint against publicly shaming or accusing someone, even if justifiable. There was little incentive for victims to report instances of sexual harassment, as they could jeopardize their career or family name by going forward with such complaints.

Reproductive Rights: Couples and individuals have the right to decide freely and responsibly the number, spacing, and timing of their children and to have the information and means to do so free from discrimination. The National Health Service, private hospitals, the Ministry of Health's public awareness programs, general practitioners, and various health care centers provided information and access to contraception and access to maternal health services, which included skilled attendance during childbirth, prenatal care, and essential obstetric and postpartum care.

Discrimination: Women have equal rights under the constitution and statutory law, and the traditionally subordinate role of women was changing, albeit slowly, particularly within the more conservative segments of society. The Ministry of Women, Community, and Social Development oversees and helps secure the rights of women. To integrate women into the economic mainstream, the government

sponsored numerous programs, including literacy and training programs for those who did not complete high school.

A labor law provision prohibits employment of women between midnight and 6 a.m. unless the commissioner of labor grants special permission. This regulation was generally observed.

## **Children**

Birth Registration: Citizenship is derived by birth in the country if at least one parent is a citizen; the government may also grant citizenship by birth to a child born in the country if the child would otherwise be stateless. Citizenship also is derived by birth abroad to a citizen parent who either was born in Samoa or resided there at least three years. Births are not always registered immediately, and some are not registered until many years later. Legally children without a birth certificate are not allowed to attend primary schools, but this was not strictly enforced.

Child Abuse: Law and tradition prohibit the severe abuse of children, but both tolerate corporal punishment. Although there were no official statistics available, press reports indicated a rise in reported cases of child abuse, especially incest and indecent assault cases, which appeared to be due to citizens' increased awareness of the need to report physical, emotional, and sexual abuse of children. The government aggressively prosecuted such cases.

Sexual Exploitation of Children: The minimum age for consensual sex is 16 years; the maximum penalty for violators is seven years' imprisonment. There is no specific criminal provision regarding child pornography; however, child pornography cases can be prosecuted under a provision of law that prohibits distribution or exhibition of indecent material. The maximum penalty is imprisonment for two years.

The Ministry of Justice and Courts Administration and the Ministry of Education, in collaboration with NGOs, carried out educational activities to address domestic violence and inappropriate behavior between adults and children and promote human rights awareness.

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

### **Anti-Semitism**

The country had no organized Jewish community, and there were no reports of anti-Semitic acts.

### **Trafficking in Persons**

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

### **Persons with Disabilities**

There is no law pertaining specifically to the status of persons with disabilities or regarding accessibility for them. Tradition dictates that families care for persons with disabilities, and this custom was observed widely in practice. There were no reports of discrimination against persons with disabilities, including physical, sensory, intellectual, and mental disabilities, in the areas of employment, education, access to health care, or the provision of other state services. Many public buildings were old, and only a few were accessible to persons with disabilities. Most new buildings provided better access, including ramps and elevators in most multistory buildings.

The Ministry of Women, Community, and Social Development has responsibility for protecting the rights of persons with disabilities.

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

Sodomy and “indecency between males” are illegal, with maximum penalties of seven and five years’ imprisonment, respectively. However, these provisions were not actively enforced with regard to consensual same-sex sexual activity between adults. Although there were no reports of societal violence based on sexual orientation or gender identity, there were isolated cases of discrimination.

### **Other Societal Violence or Discrimination**

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

### **Section 7. Worker Rights**

### **a. Freedom of Association and the Right to Collective Bargaining**

The law protects the rights of workers to form and join independent unions, to conduct legal strikes, and to bargain collectively. However, there were certain restrictions on the right to strike for government workers, imposed principally for reasons of public safety.

Workers legally have unrestricted rights to establish and join organizations of their own choosing.

The Supreme Court has upheld the right of government workers to strike, subject to certain restrictions, and workers exercised this right in practice. Although workers in the private sector have the right to strike, there were no private sector strikes during the year.

The government effectively enforced applicable laws, and in practice freedom of association was respected. The Public Service Association functioned as a union for all government workers, who made up approximately 8,000 of the approximately 25,000 workers in the formal economy. Unions generally conducted their activities free from government interference.

Workers exercised the right to organize and bargain collectively in practice. The Public Service Association engages in collective bargaining on behalf of government workers, including bargaining on wages. Arbitration and mediation procedures are in place to resolve labor disputes, although such disputes rarely arose.

There were no known instances of antiunion discrimination during the year.

### **b. Prohibition of Forced or Compulsory Labor**

The law prohibits forced or compulsory labor, and the government generally enforced laws in this regard. There is an exception in the constitution for service required by Samoan custom. A key feature of the matai system is that non-matai men perform work within their village in service to their families and the village as a whole. Most persons did so willingly; however, the matai may compel those who do not.

### **c. Prohibition of Child Labor and Minimum Age for Employment**

The law prohibits employing children under the age of 15 except in “safe and light work.” The law does not apply to service rendered to family members or the matai, some of whom required children to work for the village, primarily on village farms. The law prohibits any student from being engaged in light or heavy industrial activity within school hours of 8 a.m. to 2 p.m. The law, however, does not ban vending by children under age 14 altogether. The law prohibits children under 15 from work that could harm their physical or moral health.

The Ministry of Commerce, Industry, and Labor refers complaints of illegal child labor to the attorney general for enforcement, but no cases were prosecuted during the year.

There were no reliable statistics available on the extent of child labor. Children frequently were seen vending goods and food on Apia street corners. The government has not definitively determined whether this practice violates the country’s labor laws, which cover only persons who have a place of employment. Although the practice may constitute a violation of the law, local officials mostly tolerated it. The extent to which children were required to work on village farms varied by village, although anecdotal accounts indicated the practice was quite prevalent. Work performed by younger children was confined primarily to household chores, yard work, and light work gathering fruits, nuts, and plants. Some boys began working on plantations as teenagers, helping to gather crops such as coconuts and care for animals. Some children reportedly were employed in domestic service.

Also see the Department of Labor’s *Findings on the Worst Forms of Child Labor* at [www.dol.gov/ilab/programs/ocft/tda.htm](http://www.dol.gov/ilab/programs/ocft/tda.htm).

#### **d. Acceptable Conditions of Work**

There were two minimum wages: WST \$2.00 (\$0.89) per hour for the private sector, and WST \$2.65 (\$1.18) for the public sector. Wages in the private sector are determined by competitive demand for the required skills but should not be less than the minimum private sector wage. Approximately three-quarters of the working population worked within the subsistence economy and had no formal employment, and according to the Samoan Census Bureau’s 2008 poverty report, 26.9 percent of the population resided below the basic needs poverty line.

The provisions of the Labor Act cover only the private sector; a separate law, the Public Service Act, covers public sector workers. Labor laws stipulate a standard workweek of no more than 40 hours, or eight hours per day (excluding meal times), and prohibit compulsory overtime. For the private sector, overtime pay is specified at time and a half, with double time for work on Sundays and public holidays and triple time for overtime on such days. For the public sector, there is no paid overtime, but compensatory time off is given for overtime work. There generally are nine paid public holidays per year.

The Occupational Safety Hazard Act establishes certain rudimentary safety and health standards for workplaces, which the Ministry of Commerce, Industry, and Labor is responsible for enforcing. The law also covers persons who are not workers but who are lawfully on the premises or within the workplace during work hours. Safety laws do not generally apply to agricultural service rendered to the matai or to work done within individual families' homes.

Independent observers reported that safety laws were not enforced strictly, except when accidents highlighted noncompliance. Work accidents were investigated when reports were received. Many agricultural workers, among others, were inadequately protected from pesticides and other dangers to health. Government education and awareness programs addressed these concerns by providing appropriate training and equipment to agricultural workers.

While the law does not address specifically the right of workers to remove themselves from dangerous work situations, the commissioner of labor investigates such cases, without jeopardy to continued employment. Information was not available on specific government investigations during the year. Government employees are covered under different and more stringent regulations, which were enforced adequately by the Public Service Commission.