

TONGA

EXECUTIVE SUMMARY

The Kingdom of Tonga is a constitutional monarchy under King Siaosi (George) Tupou V. Political life is dominated by the king, the nobility, prominent commoners, and democratic reform figures. 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.

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 also at times restricted media coverage of certain political topics. A state of emergency imposed after a 2006 riot in the capital of Nuku'alofa was in effect at the beginning of the year but was lifted in early February.

There were no reports that government officials committed human rights abuses during the year.

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. Prisoners had access to potable water. 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 158 inmates, including three pretrial detainees. Of the total, four were women and 17 were juveniles (defined as under age 20). The maximum total prison capacity was 222. Prisoners had 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 member of the clergy, 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 national police, under the minister of police and prisons, maintain 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 that should 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 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.

e. Denial of Fair Public Trial

The constitution provides for an independent judiciary, and the government generally respected judicial independence in practice, although the system has been modified to increase the king's judicial appointment power. In 2010 the king transferred authority to appoint judges to the lord chancellor, appointed by the monarch, from the Judicial Services Commission, which he disbanded. The lord chancellor also has authority to investigate complaints against judges, a responsibility that previously rested with the Judicial Services Commission. The change ostensibly was made to insulate judicial appointments from parliamentary influence, but opponents asserted it would compromise the independence of the judiciary.

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, have access to government-held evidence, and may present witnesses, question witnesses against them, and appeal convictions. They have the right to be present at their trials and 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.

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

Status of Freedom of Speech and Press

The constitution provides for freedom of speech and press, but the government did not always respect these rights in practice.

Freedom of Press: Media outlets reported on political developments and high-profile court cases but exercised self-censorship regarding high-profile individuals. The government-owned Tonga Broadcasting Commission's board directed that all programming be reviewed by board-appointed censors prior to broadcast, including coverage of the 2010 election campaign.

Beginning in late 2010, parliamentary debates were made accessible to both private and publicly owned media. The debate minutes were available publicly online within days after the debates.

Libel Laws: In a May civil case, a court ruled that the newspaper *Kele'a* had defamed Clive Edwards, an unsuccessful candidate for Parliament in the 2010 elections, and fined the newspaper 14,275 pa'anga (\$8,100). The day before the elections, the newspaper published a list of candidates, including Edwards, that it claimed had been assembled and supported by the government. The editor stated the list was obtained from the then government. Government witnesses stated the government did not provide any such information. Edwards had sued the newspaper, alleging that the article was false and adversely affected his candidacy.

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

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. In February the government lifted a state of emergency that had been in effect since a 2006 riot in the capital of Nuku'alofa.

Freedom of Association

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

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 movement within the country, foreign travel, emigration, and repatriation, and the government generally respected these rights in practice.

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

Protection of Refugees

Access to Asylum: The country's 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. However, during the year the government granted refuge and Tongan citizenship to former Fijian army officer Ratu Tevita Roko Uluilakeba Mara, who fled to Tonga after being charged with sedition in Fiji. Mara had claimed the charges were politically motivated, and Tonga denied Fiji's extradition request.

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

Elections and Political Participation

Recent Elections: Parliament has 26 elected members. Of these, 17 are popularly elected and nine 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; they then also are seated in Parliament during their tenure in the cabinet. The most recent parliamentary elections, held in November 2010, were deemed generally free and fair.

Although the majority of members of Parliament are chosen by popular vote, 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 have traditionally dominated the Parliament and government. For several decades a democracy movement has been building, and since 2005 three proreform political parties have been registered, although during the year only two were active.

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 a woman to inherit hereditary noble titles or become a chief.

There were no members of minorities in the government or Parliament.

Section 4. Official Corruption and Government Transparency

The law provides criminal penalties for official corruption. The government sometimes implemented the law, but officials engaged in corrupt practices with impunity, and corruption remained a serious problem. Since 2008 the Office of the Auditor General has reported 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 and Domestic Violence: 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 reported were investigated by the police and prosecuted under the penal code. According to the police, there were three cases of rape reported in 2011. Nongovernmental organizations (NGOs) often reported higher figures than the police.

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 no drop policy was introduced in 2009 because many women were reluctant to press charges against their spouses due to cultural constraints. During the year there were approximately 300 cases of domestic violence reported to the Police Domestic Violence Unit. Following reports of abuse, victims received counseling from the unit's 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.

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 Women and Children Crisis

Center indicated that as of October, 241 persons received assistance from the center during the year, including 169 women, 10 men, and 62 children.

Sexual Harassment: 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.

Reproductive Rights: 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. 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.

Discrimination: 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. Both the inheritance laws and the land rights laws increased economic discrimination experienced by women in terms of their ability to access credit and own and operate businesses.

Women had lower labor force participation rates than their male counterparts (74.6 percent for men compared with 52.7 percent for women). Unemployment levels were higher for women, at 7.4 percent, compared with 3.6 percent for men. Average weekly earnings were higher for men--127 pa'anga (\$68) compared with 112 pa'anga (\$60) 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 that of governor of the Reserve Bank.

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.

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 in practice.

Child Abuse: According to Police Domestic Violence Unit statistics, during the year there were 33 reports of assaults on children up to age 19 (28 girls and five boys).

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

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

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 program of the Ministry of Education, Women, and Culture to assimilate children with disabilities into primary schools continued during the year. The queen mother ran a center providing accommodation and meals for adults with disabilities. There 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. A subculture of transgender dress and behavior was tolerated, and a prominent NGO and annual festival highlighted transgender identities. 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. Freedom of Association and the Right to Collective Bargaining

The law protects the right of workers to form and join independent unions, strike, and engage in collective bargaining, but regulations on the formation of unions, strikes, and collective bargaining were never promulgated. There is no law specifically prohibiting antiunion discrimination or providing for reinstatement of workers fired for union activity. There were no official unions. The Friendly Islands Teachers Association and the Tonga Nurses Association were incorporated under the Incorporated Societies Act but have no formal bargaining rights under the act. The Public Servants Association acted as a de facto union representing all government employees. There have been strikes, but none took place during the year.

Collective bargaining was not known to take place in practice. There were no known reports of antiunion or antiassociation 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 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.

Also 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, 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.

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 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 (\$16) per week. 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 extra costs like education, transport, and utility bills.

Labor laws and regulations, enforced by the Ministry of Labor, Commerce, and Industries, limited the work week to 40 hours. There are no laws mandating premium pay for overtime or prohibiting excessive compulsory overtime.

The ministry enforced labor 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.