

# TONGA 2016 HUMAN RIGHTS REPORT

## EXECUTIVE SUMMARY

The Kingdom of Tonga is a constitutional monarchy. King Tupou VI succeeded his older brother in 2012, and was formally crowned in 2015. The king, popularly elected parliamentary leaders, the nobility and their representatives, prominent commoners, and democratic reform figures dominated political life. Parliamentary elections, which observers characterized as generally free and fair, were held in 2014, and in 2014 parliament elected long-time supporter of democratic reform Samiuela 'Akilisi Pohiva as prime minister.

Civilian authorities maintained effective control over the security forces.

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

Other concerns included the lack of public defenders for the poor, women's lack of rights to land, and the lack of comprehensive labor legislation.

The government took steps to prosecute officials who committed abuses; the courts convicted a member of parliament for bribery.

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

#### **a. Arbitrary Deprivation of Life and other Unlawful or Politically Motivated Killings**

There were no reports that the government or its agents committed arbitrary or unlawful killings during the year.

#### **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 there were no reports that government officials employed them.

## **Prison and Detention Center Conditions**

There were no significant reports regarding prison or detention center conditions that raised human rights concerns.

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

### **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. His Majesty’s Armed Forces (HMAF), under the minister of defense, is responsible for external security. In emergency situations, the HMAF also shares domestic security duties with the police. Civilian authorities maintained control over the HMAF and police, and the government has effective mechanisms to investigate and punish abuse and corruption. There were no reports of impunity involving the security forces during the year.

## **Arrest Procedures and Treatment of Detainees**

Police may arrest suspects without a warrant during the commission of a crime; otherwise, the authorities apprehend suspects with warrants issued by a local magistrate. In both cases, the authorities bring those arrested before a local magistrate within 24 hours for judicial determination of the legality of the detention. Authorities promptly inform arrested persons of charges against them. The law provides for a functioning bail system. The constitution provides the right to initiate habeas corpus proceedings. Access by counsel, family, and others to arrested persons may be restricted, but authorities generally facilitated access. No legal aid framework existed to provide services for the indigent. Accused persons

must generally represent themselves if they cannot afford legal counsel, although in more serious cases the judge may appoint a lawyer pro bono.

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

The constitution provides for an independent and impartial judiciary but gives the lord chancellor, appointed by the king, responsibility for all matters related to the judiciary, including appointment, investigation, and removal of judges.

#### **Trial Procedures**

The constitution provides for the right to a fair public 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. Defendants are presumed innocent and cannot be compelled to testify or confess guilt. Authorities inform them promptly and in detail of charges, and free interpretation is available if necessary. Defendants 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 of their choice in a timely manner, and have adequate time and facilities to prepare a defense. There is no provision for public defenders, but local lawyers occasionally took pro bono cases. The law extends these rights to all defendants without discrimination.

#### **Political Prisoners and Detainees**

There were no reports of political prisoners or detainees.

#### **Civil Judicial Procedures and Remedies**

Private citizens may seek redress in the courts for any violation of a human right provided for in the law.

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

The constitution prohibits such actions, and there were no reports that the government failed to respect 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 the government generally respected these rights. An independent press, the judiciary, and a functioning democratic political system combined to promote freedom of speech and press.

Press and Media 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. The board of the Tonga Broadcasting Commission (TBC), a government-owned company, directed that board-appointed censors review all TBC programming prior to broadcast.

### **Internet Freedom**

The government did not restrict or disrupt access to the internet or censor online content, and there were no credible reports that the government monitored private online communications without appropriate legal authority. Workplaces and internet cafes provided internet access, but most homes did not have such access.

### **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 the freedoms 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/religiousfreedomreport/](http://www.state.gov/religiousfreedomreport/).

### **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 UN High Commissioner for Refugees and other humanitarian organizations in providing protection and assistance to refugees and other persons of concern.

### **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.

### **Section 3. Freedom to Participate in the Political Process**

The constitution and law provide citizens the ability to choose their government in free and fair periodic elections held by secret ballot, based on universal and equal suffrage.

### **Elections and Political Participation**

Recent Elections: Observers deemed the most recent parliamentary elections in 2014 to be generally free and fair. 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, who also hold seats in parliament during their tenure in the cabinet.

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

Political Parties and Political Participation: There are four registered parties in the country; the most powerful was the Democratic Party of the Friendly Isles.

Participation of Women and Minorities: Although there are no formal barriers to women's participation in political life, a variety of institutional and cultural factors have kept women's representation to a minimum. Among these are the reservation of nine seats in parliament for men; continuing male domination of informal local government systems, which denies women "entry-level" positions in politics; and

cultural attitudes (often shared by women) about women's proper roles and competence. The rate of registration to vote among women is the same as the rate among men, and women have the same legal rights to stand for election. No women were elected to parliament in 2014. The election of one woman to parliament in a 2016 by-election and the election of several women to local offices in July 2016 suggests that attitudes are beginning to shift. 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, and although the government sought to implement the law effectively, there were reports of government corruption during the year, and officials sometimes engaged in corrupt practices with impunity.

Corruption: In January the Supreme Court found Tourism Minister 'Etuata Lavulavu guilty of conspiracy to commit bribery on three separate occasions during the 2014 national election. He was found to have violated election spending limits. The court declared his election void, and he was subsequently dismissed from parliament. He appealed the verdict.

There were reports of bribery and other forms of corruption in parliament.

The Office of the Auditor General reports directly to parliament. The Office of the Anti-Corruption Commissioner is empowered to investigate official corruption. Both entities actively collaborated with civil society, but they neither operated effectively or independently nor were they sufficiently resourced.

Financial Disclosure: No law requires 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 difficult, especially when the government deemed the information sensitive. The Freedom of Information Policy, implemented by the Ministry of Information and Communication, gives persons the right to access some information on the roles and operations of each

workplace in the public sector and to lodge a complaint with the commissioner of public relations if a government ministry refuses to disclose the requested information. Citizens exercised this right during the year.

### **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.

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

#### **Women**

Rape and Domestic Violence: Rape is punishable by up to 15 years in prison. The law recognizes spousal rape. Police investigated reported rape cases, and the government prosecuted these cases under the law. As of October the Women and Children Crisis Center reported four rape cases.

The law makes domestic violence a crime punishable by up to 12 months in prison, a fine of 2,000 pa'anga (\$940), or both. Repeat offenders face up to three years in prison or a maximum fine of 10,000 pa'anga (\$4,700). The law provides for protection from domestic violence, including protection orders; clarifies the duties of police; and promotes the health, safety, and well-being of domestic violence victims.

The police domestic violence unit has a “no-drop” policy in complaints of domestic assault--once filed, domestic violence cases cannot be dropped and proceed to prosecution in the magistrates’ courts. Following reports of abuse, the unit’s officers counsel victims. Male officers also counsel perpetrators. Police work with the National Center for Women and Children as well as with the Women and Children Crisis Center to provide shelter for abused women, and girls and boys under age 14. Both centers operated a safe house for victims. As of June the Women and Children Crisis Center reported 505 domestic violence cases. The Free Wesleyan Church operated a hotline for women in trouble, and the Salvation Army provided counseling and rehabilitation programs.

Sexual Harassment: Sexual harassment is not a crime under the law, but physical sexual assault can be prosecuted as indecent assault. Sexual harassment within a

domestic relationship is an offense. Complaints received by the police domestic violence unit indicated that sexual harassment of women sometimes occurred.

Reproductive Rights: In general couples and individuals have the right to decide the number, spacing, and timing of their children; manage their reproductive health; and to have the information and means to do so, free from discrimination, coercion, and violence. Public hospitals, health centers, and several local and international nongovernmental organizations (NGOs) provided free information about and access to contraception; however, under a Ministry of Health policy, a woman does not have permission 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. Many pregnant women reportedly did not seek these services, which are also less available in the outer islands, contributing to a maternal mortality rate of 120 deaths per 100,000 live births. According to data published by the World Health Organization, skilled health personnel attend 99 percent of births, excluding the outer islands.

Discrimination: Inheritance laws, especially those concerned with land, discriminate against women. Women can lease land, but inheritance rights pass through the male heirs only. 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. The inheritance and land rights laws also reduced women's ability to access credit and to own and operate businesses.

Discrimination with respect to employment and wages occurred with respect to women (see Section 7.d.). Women who rose to positions of leadership often had links with the nobility. Some female commoners held senior leadership positions in businesses and government.

## **Children**

Birth Registration: Birth in the country does not confer citizenship. Individuals acquire citizenship at birth automatically if at least one parent is a citizen.

Child Abuse: As of June the Women and Children Crisis Center reported 32 cases of physical assault on female children (up to age 20) and nine cases of assaults on male children. The Women and Children Crisis Center have implemented various

child abuse awareness programs at schools from primary to tertiary levels. On March 8, the Women and Children Crisis Center launched a weekly community radio talk show program.

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

Sexual Exploitation of Children: The law prohibits child pornography with penalties of a fine of up to 100,000 pa'anga (\$46,950) or up to 10 years in prison for individuals and a fine of up to 250,000 pa'anga (\$117,370) for corporations. The minimum age for consensual sex is 15. Violators may be charged with "carnal knowledge of a child under age 12," which carries a maximum penalty of life in prison, or "carnal knowledge of a child under 15," which carries a maximum penalty of five years in prison. There were anecdotal 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. See the Department of State's *Annual Report on International Parental Child Abduction* at [travel.state.gov/content/childabduction/en/legal/compliance.html](http://travel.state.gov/content/childabduction/en/legal/compliance.html).

### **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/rls/tiprpt/](http://www.state.gov/j/tip/rls/tiprpt/).

### **Persons with Disabilities**

The constitution prohibits discrimination on the basis of disability, but no laws specifically prohibit discrimination against persons with physical, sensory, intellectual, or mental disabilities, and there are no legally mandated provisions for services or government programs for adults with disabilities, including regarding building accessibility or access to communications and information.

A Ministry of Education, Women, and Culture program to bring 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. Children with more severe disabilities generally attended a school operated by the Tonga Red Cross Society, which also conducted occasional home visits.

Under the National Policy on Disability Inclusive Development 2014 to 2018 and the Action Plan for the National Policy on Disability Inclusive Development, the government established a National Council on Disability and designated the Ministry of Internal Affairs to work on disability-related problems.

### **National/Racial/Ethnic Minorities**

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

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

By law “sodomy with another person” is a crime with a maximum penalty of 10 years in prison, but there were no reports of prosecutions under this provision for consensual sexual conduct between adults, regardless of the gender of the parties. No laws specifically prohibit discrimination based on sexual orientation or gender identity or address hate crimes. No criminal justice mechanisms exist to aid in the prosecution of bias-motivated crimes against members of the lesbian, gay, bisexual, transgender, and intersex (LGBTI) community. Society accepted 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 reporting of incidents of discrimination or violence

### **HIV and AIDS Social Stigma**

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

## **Section 7. Worker Rights**

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

The law provides for the right to form and join independent unions, but the government has not promulgated regulations on the formation of unions, collective bargaining, or the right to strike. No law specifically prohibits antiunion discrimination or provides for reinstatement of workers fired for union activity. Tonga officially joined the International Labor Organization (ILO) on February 24. Authorities are working with the ILO on revised labor legislation. There was no dispute resolution mechanism in place specifically for labor disputes, although persons could take cases to court or refer cases to the commissioner for public relations.

Government enforcement of the freedom of association was not entirely effective. Penalties for violations incur criminal fines not exceeding 50 pa'anga (\$23.50), which are not sufficient to deter violations. Administrative and judicial procedures were subject to lengthy delays and appeals.

The government and employers generally respected freedom of association in practice. Trade unions and credit unions exist, as well as a variety of worker associations. For example, The Friendly Islands Teachers Association and the Tonga Nurses Association were legally incorporated as civil societies, and the Friendly Island Seafarer's Union Incorporated was affiliated with the International Transport Workers Federation; however, none had formal bargaining rights under the law. The Public Service Association acted as a de facto union representing all government employees. There were no reports that collective bargaining takes place.

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

The law prohibits all forms forced or compulsory labor. The government effectively enforced the law. The law prescribes up to 20 years' imprisonment, which observers generally considered sufficient to deter violations. Although the government made some progress in enforcing relevant legal provisions, no data were available on government efforts specifically to address forced labor. In 2015

the government initiated one investigation of a potential trafficking case involving Bangladeshi men in conditions indicative of forced labor and began to include anti-trafficking in persons training for new police recruits. There were some anecdotal reports of forced labor among women and children in domestic service (also see section 7.c.).

See the Department of State's *Trafficking in Persons Report* at [www.state.gov/j/tip/rls/tiprpt/](http://www.state.gov/j/tip/rls/tiprpt/).

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

No legislation prohibits child labor or specifies a minimum age for employment. There were no reports that child labor existed in the formal 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 of commercial sexual exploitation (see section 6, Children) and involuntary domestic servitude of some children.

Also see the Department of Labor's *Findings on the Worst Forms of Child Labor* at [www.dol.gov/ilab/reports/child-labor/findings/](http://www.dol.gov/ilab/reports/child-labor/findings/).

### **d. Discrimination with Respect to Employment or Occupation**

The law does not prohibit discrimination regarding race, color, sex, religion, political opinion, national origin or citizenship, social origin, disability, sexual orientation and/or gender identity, age, HIV or other communicable disease status, or language. Discrimination against women in employment and wages occurred (see section 6, Women). Women participated in the work force at a lower rate than men, were generally employed in lower-skilled jobs, and earned measurably less than men. Reports of discrimination against foreign domestic workers circulated during the year. Some employers reportedly confiscated foreign domestic workers' passports and subjected the workers to exploitative practices.

### **e. Acceptable Conditions of Work**

There is no minimum wage law, although the Ministry of Commerce, Tourism, and Labor set guidelines for wage levels. While there was no recent data available, relatively few people appear to live in destitution, but a significant fraction of the

population had difficulty paying for more than basic needs, such as education, transportation, and utility bills.

Labor regulations limit the workweek to 40 hours. Government employees are entitled to paid annual holidays and three months' maternity leave. No laws mandate premium pay for overtime or prohibit 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. Heads of government departments have the discretion to approve annual leave once a government employee has worked for one calendar year.

The law stipulates specific occupational health and safety standards for each sector, such as fisheries and agriculture. These standards are current and appropriate for main industries. Workers can remove themselves from situations that endanger health or safety without jeopardizing their employment.

Enforcement of regulations was inconsistent. The Ministry of Commerce, Tourism, and Labor sought to enforce these standards in all sectors, including the informal economy; however, there were an insufficient number of inspectors with only five officers in the ministry. Penalties for violations took the form of monetary fines, which were adequate to deter violations.

There were no reports of violations of wage or hours of work provisions. Few industries exposed workers to significant danger.