

SAMOA 2019 HUMAN RIGHTS REPORT

EXECUTIVE SUMMARY

Samoa is a constitutional parliamentary democracy that incorporates traditional practices into its governmental system. Although the unicameral parliament is elected by universal suffrage, only *matai* (heads of extended families) may be members. In 2016 voters elected a new parliament, confirming Prime Minister Tuilaepa Sailele Malielegaoi in office. The elections were free and fair on the day, but the *matai* requirement and the questionable disqualification of candidates caused some observers to question the fairness of the outcome.

The national police, under the Ministry of Police, maintain internal security. Civilian authorities maintained effective control over the security forces.

Significant human rights issues included: arbitrary or unlawful interference with privacy at the village government level; criminal libel laws; laws criminalizing consensual same-sex sexual conduct between adults, although the law was not enforced; and forced child labor.

The government took steps to prosecute officials who committed abuses. There were no reports of impunity.

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 the government or its agents committed arbitrary or unlawful killings.

b. Disappearance

There were no reports of disappearances by or on behalf of government authorities.

c. Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment

The constitution prohibits such practices, and there were no reports government officials normally employed them. There were allegations of abuses by some

police officials, such as the use of physical violence against detainees. In November, two men recaptured after escaping from prison alleged during their subsequent appearance in court on escape charges that they were assaulted in prison after their recapture. One of the two, Aniseko Vaelei, also alleged deprivation of food, bedding, visitors, and opportunities to shower.

Prison and Detention Center Conditions

Prison conditions were harsh due to inadequate food, potable water, overcrowding, physical abuse, and inadequate sanitary conditions. In June new prison facilities opened in Tanumalala, on Upolu Island, about an hour's drive from downtown Apia. All prisoners housed at Tafaigata, more than 300, were transferred to Tanumalala at that time.

Physical Conditions: The new Tanumalala prison has adequate ventilation, lighting, and sanitation. Pretrial detainees were held together with convicts. Authorities made only basic provision for food, water (including potable water), and sanitation.

Authorities housed juveniles (prisoners younger than age 26) at the Olomanu Juvenile Center, where physical conditions generally were better than in adult facilities.

Police held overnight detainees in two cells at police headquarters in Apia and one cell at Tuasivi.

There was no progress in the inquest into the 2017 death of a male prisoner. Prison officials ruled the death a suicide by hanging, a claim the family disputed.

Administration: The prison system could not account for or effectively supervise all inmates. This was evident in the recurring prison escapes and delays in recapturing escapees.

Authorities permitted prisoners and detainees to submit complaints to judicial authorities and request investigation of alleged problematic conditions. Authorities investigated such allegations, documented them, and made the results publicly accessible. The government generally investigated and monitored prison and detention center conditions.

Independent Monitoring: The government permitted monitoring visits by independent human rights observers.

Improvements: The new Tanumalala prison consists of six cellblocks with four for male inmates, one for women, one for custody, and a facility to hold high-risk detainees, an administration building for prison staff, a medical clinic, as well as a chapel with a high security fence.

d. Arbitrary Arrest or Detention

The constitution prohibits arbitrary arrest and detention and provides for the right of any person to challenge the lawfulness of his or her arrest or detention in court, and the government generally observed these requirements.

Arrest Procedures and Treatment of Detainees

The Supreme Court issues arrest warrants based on compelling evidence. The law provides for the right to a prompt judicial determination of the legality of detention, and authorities generally respected this right. Officials informed detainees within 24 hours of the charges against them or else released them. There was a functioning bail system. The government allowed detainees prompt access to a lawyer of their choice, provided indigent detainees with a lawyer upon request, and did not hold suspects incommunicado or under house arrest.

e. Denial of Fair Public Trial

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

Trial Procedures

The constitution provides for the right to a fair public trial, and an independent judiciary generally enforced this right. A trial judge examines evidence and determines if there are grounds to proceed. Under the law, defendants are presumed innocent and may not be compelled to testify or confess guilt. Trials are public except for trials of juveniles, which only immediate family members may attend. Defendants have the right to be present at their trial; have timely consultation with an attorney; receive prompt and detailed information of the charges, including interpretation services as necessary from the moment charged through all appeals; and to adequate time and facilities to prepare a defense.

Defendants may confront witnesses, present witnesses and evidence on their own behalf, access government-held evidence, and appeal a verdict. The law extends these rights to all defendants.

Village councils handled many civil and criminal matters, but the councils varied considerably in decision-making styles and the number of matai involved in decisions. The law recognizes the decisions of village councils and provides for limited appeal to the Lands and Titles Court and the Supreme Court. The nature and severity of a dispute determines which court receives an appeal. Defendants may make a further appeal to the Court of Appeal. A Supreme Court ruling stipulates that village councils may not infringe upon villagers' freedom of religion, speech, assembly, or association. Village councils, however, consistently ignored this ruling.

The law on village councils seeks to ensure that the powers exercised by the village council comply with the constitution and provides detail on what is a punishable offense and steps to be taken to carry out a punishment. Because of a strong cultural focus on village authority, the effect of the law remains uncertain. In October, for example, three persons were charged with arson after a fire destroyed the home of Fialele Amatega, who had sought to bury his wife on family land. The village council denied the request and banished him from the village. Amatega obtained a favorable ruling from the Land and Title Court and buried his wife. His house burned the following night and his family alleged village involvement in the arson.

Political Prisoners and Detainees

There were no reports of political prisoners or detainees.

Civil Judicial Procedures and Remedies

Individuals or organizations may seek civil remedies for human rights violations through the courts.

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

The laws prohibit such actions, and there were no reports the national government failed to respect these prohibitions. There was little privacy in villages, where

there could be substantial societal pressure on residents to grant village officials access to their homes without a warrant.

Section 2. Respect for Civil Liberties, Including:

a. Freedom of Expression, Including for the Press

The law provides for freedom of expression, including for the press, and the government generally respected this right. An independent press, an effective judiciary, and a functioning democratic political system combined to promote 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.

Censorship or Content Restrictions: The law authorizes the Samoa Tourism Authority (STA) to file suit against any person who publishes information about the tourism industry that it deems prejudicial to the public perception of the country. Violators are subject to a fine or maximum imprisonment of three months if they fail to retract the information or to publish a correction when ordered to do so by the STA. The STA did not exercise this authority in the year to October.

Libel/Slander Laws: Libel may be prosecuted as a criminal offense. The law was enacted in late 2017 largely in response to an increase in social media bloggers posting defamatory allegations, often about government leaders. Local media regard the law as an obstacle to press freedom.

In February, Malele Paulo, an Australia-based Samoan blogger, travelled to the country to attend his mother's funeral. Paulo was arrested and charged with criminal libel for posting accusations that the prime minister played a part in the assassination of a fellow cabinet minister in 1999, along with other accusations. In July, Paulo pled guilty to the criminal libel charges at an initial hearing, but later withdrew his plea. In October, Paulo was sentenced to 7 weeks in prison. Paulo has also been charged in an August conspiracy to assassinate the prime minister but that case had not gone to trial as of December.

Internet Freedom

The government did not restrict access to the internet or censor online content, and there were no credible reports the government monitored private online communications without appropriate legal authority.

Academic Freedom and Cultural Events

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

b. Freedoms 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 <https://www.state.gov/religiousfreedomreport/>.

d. Freedom of Movement

The constitution provides for freedom of internal movement, foreign travel, emigration, and repatriation and the government generally respected these rights.

In-country Movement: There were reports some village councils banished individuals or families from villages.

e. Internally Displaced Persons

Not applicable.

f. Protection of Refugees

Access to Asylum: The law provides for granting refugee status, but the government has not yet established a system for providing protection to refugees. There were no requests for asylum or refugee status.

g. Stateless Persons

Not applicable.

Section 3. Freedom to Participate in the Political Process

The constitution provides citizens the ability to choose their government in free and fair periodic elections held by secret ballot and based on universal and equal suffrage. The government repealed the Electoral Act 1963 passing a new Electoral Act 2019. It combines all amendments to the repealed Act along with a requirement that all citizens 21 years and older register as voters and vote in national elections.

Elections and Political Participation

Recent Elections: The Electoral Act 2019 was tested in a by-election that took place in March. The Electoral Commissioner issued public notices regarding legal actions that are to be brought against those who did not register or did not vote. Observers considered the 2016 general election free and fair. The Human Rights Protection Party retained government control for a seventh consecutive term, winning 47 of 50 seats. The Tautua Samoa Party controlled three seats, not enough to form an official opposition. Following the election, plaintiffs filed six electoral petitions with the Supreme Court on grounds including cash and noncash bribery, during the campaign. Of the six, five were withdrawn and the court dismissed one for lack of evidence. Bribery, village pressure, and the threat of countersuits were reportedly cited as reasons for petition withdrawals.

Political Parties and Political Participation: The constitution gives all citizens older than age 21 the right to vote; however, only persons with a matai title, the 17,000 chiefly leaders of extended families, may run for parliament or serve on village councils. Matai are appointed, not elected, to the councils.

In addition to the restrictions favoring matai, the 2016 election was the first to require all candidates to satisfy a three-year period of *monotaga* (services rendered through participation and physical contributions) in their respective village(s) to be eligible to run. The law sought to ensure that candidates fulfilled cultural and other commitments to their village and could not just use their matai status or make large, last-minute contributions to their villages to garner votes. The amendment led to a number of court petitions and the disqualification of five candidates deemed not to have met the requirement. The cases exposed deficiencies in the amendment since *monotaga* is ill defined and can mean different types of service (or exemption from service for certain matai) in different villages. Some saw such subjective disqualifications as human rights abuses.

Participation of Women and Minorities: No laws limit participation of women or members of minorities in the political process, and they did participate. Four

women won seats in parliament outright in 2016. A 50th seat was added to parliament to ensure that the constitutionally mandated 10 percent female representation in parliament was observed. The seat went to the unsuccessful woman candidate with the highest percentage of votes in her constituency. Although both men and women may become matai, only 10 percent of matai were women. Of the five female members of parliament, Fiame Naomi Mataaafa is deputy prime minister, a first for the country.

Section 4. Corruption and Lack of Transparency in Government

The law provides criminal penalties for corruption by officials, and the government generally implemented the law effectively. The maximum penalty for corruption is 14 years' imprisonment. There were reports of government corruption. In May the contract of the chief executive officer (CEO) of the Ministry of Justice and Courts Administration was terminated following his suspension in March when the Public Service Commission (PSC) filed six charges against him. One of the charges included a breach of the Public Service Act, based on an allegation that the CEO unlawfully authorized the release of original Lands and Titles Court files relating to the minister of justice. The CEO was terminated, however, not for the removal of court files, but for inappropriate behavior towards female employees and alleged misconduct in relation to other ministry employees, issues that came to light during the PSC investigation.

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. The Attorney General's Office prosecutes criminal corruption cases on behalf of the PSC. The Ombudsman's Office and the PSC operated effectively. The Ombudsman's Office included academics and other members of civil society among the members of its commissions of inquiry.

Corruption: There was public discontent throughout the year at significant delays in the submission of annual audit reports to parliament and the lack of punitive action. For example, the latest publicly available report of the controller and auditor general's reports to parliament was for the 2014-15 fiscal year. The reports for the three subsequent years were tabled in parliament in March.

Financial Disclosure: Although there are no financial disclosure laws, codes of ethics applicable to boards of directors of government owned corporations encouraged public officials to follow similar disclosure.

Section 5. Governmental Attitude Regarding International and Nongovernmental Investigation of Alleged Abuses 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: Observers considered the Office of the Ombudsman generally effective and able to operate free from government or political party interference. The government usually adopted its recommendations. The Office of the Ombudsman also houses the National Human Rights Institute.

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

Women

Rape and Domestic Violence: The constitution prohibits the abuse of women. Rape is a crime, but there is no legal provision against spousal rape. The courts treated rape seriously, and the conviction rate generally was high. The penalties for rape range from two years to life imprisonment, but no court has ever imposed a life sentence.

When police received complaints from abused women, authorities investigated and charged the offender. Authorities charge domestic violence as common criminal assault, with a maximum penalty of one year's imprisonment. Village councils typically punished domestic violence offenders only if they considered the abuse extreme, such as when there were visible signs of physical harm. In the past few years, several villages have taken the extra step of incorporating specific fines into their village by-laws. In one village the fine is WST\$2,000 (\$800) per offense.

The government acknowledged that rape and domestic abuse were of significant concern. The *National Public Inquiry into Family Violence*, released in September 2018, revealed that 86 percent of women experienced some form of physical violence from an intimate partner, and 24 percent had experienced choking. Many cases of rape and domestic abuse went unreported because societal attitudes discouraged such reporting and tolerated domestic abuse. Social pressure and fear of reprisal typically caused such abuse to go unreported.

The Ministry of Police has a nine person Domestic Violence Unit that works in collaboration with nongovernmental organizations (NGOs) and focuses on combatting domestic abuse.

Sexual Harassment: No law specifically prohibits sexual harassment, and there were no reliable statistics on its incidence. The lack of legislation and a cultural constraint against publicly shaming or accusing someone, even if justifiable, reportedly caused sexual harassment to be underreported. Victims had little incentive to report instances of sexual harassment, since doing so could jeopardize their career or family name.

Coercion in Population Control: There were no reports of coerced abortion or involuntary sterilization.

Discrimination: Women and men have equal rights under the constitution and statutory law, and the traditionally subordinate role of women continued to change, albeit slowly.

Children

Birth Registration: A child is a citizen by birth in the country if at least one parent is a citizen. The government also may grant citizenship by birth to a child born in the country if the child would otherwise be stateless. Citizenship also derives by birth abroad to a citizen parent who either was born in the country or resided there at least three years. By law children without a birth certificate may not attend primary schools, but authorities did not strictly enforce this law.

Child Abuse: Law and tradition prohibit abuse of children, but both tolerate corporal punishment. The law prohibits corporal punishment in schools; a teacher convicted of corporal punishment of a student may face a maximum one year prison term.

The government aggressively prosecuted reported cases of child abuse.

Press reports indicated an increase in child abuse reports, especially of incest and indecent assault cases; the rise appeared to be due to citizens' increased awareness of the importance of reporting physical, emotional, and sexual abuse of children.

Early and Forced Marriage: The legal minimum age for marriage is 21 for a man and 19 for a woman. Consent of at least one parent or guardian is necessary if

either party is younger than the minimum. Marriage is illegal if a woman is younger than age 16 or a man is younger than age 18. Early marriage did not generally occur.

Sexual Exploitation of Children: The minimum age for consensual sex is 16. Under the law, the maximum penalty for sexual relations with children younger than age 12 is life imprisonment and for children between ages 12 and 15 the maximum penalty is 10 years' imprisonment. The law contains a specific criminal provision regarding child pornography. The law specifies a seven-year prison sentence for a person found guilty of publishing, distributing, or exhibiting indecent material featuring a child. Because 16 is the age of majority, the law does not protect 16- and 17-year-old persons.

Although comprehensive data on the sexual abuse of children was not available, the sexual abuse of children remained a widespread problem. In the *National Public Inquiry into Family Violence*, nearly 10 percent of female respondents reported they were raped as children by a family member.

The Ministry of Justice and Courts Administration and the Ministry of Education, in collaboration with NGOs, carried out educational activities to address domestic violence, sexual abuse, and 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. See the Department of State's *Annual Report on International Parental Child Abduction* at <https://travel.state.gov/content/travel/en/International-Parental-Child-Abduction/for-providers/legal-reports-and-data/reported-cases.html>.

Anti-Semitism

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

Trafficking in Persons

There were no confirmed reports during the year that the country was a source, destination, or transit country for victims of human trafficking.

Persons with Disabilities

While no law prohibits discrimination against persons with physical, sensory, intellectual, and mental disabilities in the provision of public services, the law does prohibit disability-based discrimination in employment.

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.

Tradition dictates that families care for persons with disabilities, and the community observed this custom widely.

Some children with disabilities attended regular public schools, while others attended one of three schools in the capital created specifically to educate students with disabilities.

National/Racial/Ethnic Minorities

There were no new reports of bans on setting up Chinese-owned retail shops on customary land within villages during the year; four villages banned Chinese-owned shops in 2017. These actions followed the rapid spread of ethnic Chinese-owned retail shops throughout Apia and into rural villages. The bans apply only on village-owned land (approximately 80 percent of land in the country), not to government or freehold land. During the year, however, there were two attacks on Chinese businesses; both involved violent assault of the Chinese owners and employees, resulting in one death. Many Chinese and ethnic Samoans feel Chinese are being targeted partly because of their ethnicity. There were no similar attacks on ethnically Samoan-owned businesses.

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

“Sodomy” and “indecent between males” are illegal, with maximum penalties of seven and five years’ imprisonment, respectively, but authorities did not enforce these provisions with regard to consensual same-sex sexual conduct between adults.

Although there were no reports of societal violence based on sexual orientation or gender identity, there were isolated cases of discrimination. Society publicly recognized the transgender Fa’afafine community; however, members of the community reported instances of social discrimination.

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. There are certain restrictions on the right to strike for government workers, imposed principally for reasons of public safety. The law states that a public sector employee who engages in a strike or any other industrial action is considered “dismissed from...employment.” The law prohibits antiunion discrimination, such as contract conditions that restrict free association. The law addresses a range of fundamental rights and includes the establishment of a national tripartite forum that serves as the governing body for labor and employment matters in the country.

The government effectively enforced laws on unionization, and the government generally respected freedom of association. Penalties were sufficient to deter violations. The Public Service Association functioned as a union for all government workers. Unions generally conducted their activities free from government interference.

Workers exercised the right to organize and bargain collectively. The Public Service Association engaged in collective bargaining on behalf of government workers, including on wages. Arbitration and mediation procedures were in place to resolve labor disputes, although such disputes rarely arose. The government has the right to dissolve unions without going to court, a provision of the law criticized by the International Labor Organization (ILO).

There were no reports of strikes.

b. Prohibition of Forced or Compulsory Labor

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

The government did effectively enforce the law. The law states that forced labor is punishable by penalties sufficient to deter violations. Aside from the cultural exception noted above and street vending by children, forced labor was not considered a problem. The Ministry of Commerce, Industry, and Labor received no complaints and found no violations of forced labor during inspections conducted.

c. Prohibition of Child Labor and Minimum Age for Employment

The law does not prohibit all of the worst forms of child labor. The ILO noted that the law does not effectively prohibit the procuring or offering of children between the ages of 16 and 18 for the production of indecent materials. The law also does not specifically prohibit the use, procuring or offering of a child for illicit activities, in particular for the production and trafficking of drugs.

The law prohibits employing children ages 12-14 except in “safe and light work.” The government issued a public notice clarifying the hazardous work occupations prohibited for children under age 18.

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 family farms. The law prohibits any student from engaging in light or heavy industrial activity during school hours of 8 a.m. to 2 p.m.

The law restricts vending by school-aged children (younger than age 14) if it interferes with their school attendance, participation in school activities, or educational development. This law is effectively enforced in the formal economy, but only minimally enforced in the informal economy in areas such as child street vending, which takes place at all hours of the day and night. Children frequently sold goods and food on street corners. The problem of child street vending attracted significant media coverage and public outcry. There were no reliable statistics available on the extent of child labor, but it occurred largely in the informal sector.

The extent to which children had to work on village farms varied by village, although anecdotal accounts indicated the practice was common. Younger children primarily did yard work and light work such as gathering fruit, nuts, and plants. Some boys began working on plantations as teenagers, helping to gather crops such as coconuts and caring for animals. Some children reportedly had domestic service employment.

Also see the Department of Labor's *Findings on the Worst Forms of Child Labor* at <https://www.dol.gov/agencies/ilab/resources/reports/child-labor/findings>.

d. Discrimination with Respect to Employment and Occupation

The law prohibits discrimination, direct or indirect, against an employee or an applicant for employment based on ethnicity, race, color, sex, gender, religion, political opinion, national extraction, sexual orientation, social origin, marital status, pregnancy, family responsibilities, real or perceived HIV status, and disability.

The government effectively enforced the law, and penalties were sufficient to deter violations. The Labor Ministry received one complaint regarding unfair hiring practices during the year. The hiring and recruiting process for the private sector is outside of the scope of the Labor and Employment Relations Act. No cases drew public attention.

To integrate women into the economic mainstream, the government sponsored numerous programs, including literacy and training programs.

e. Acceptable Conditions of Work

There were separate minimum wage scales for the private and public sectors. Both minimum wages were below the official estimate of the poverty income level for a household. The government effectively enforced wage laws, and penalties were sufficient to deter violations. Approximately 75 percent of the working population worked in the subsistence economy and had no formal employment.

The law covers private and public sector workers differently. For the private sector, the law specifies overtime pay at time and a half, with double time for work on Sunday and public holidays. For the public sector, there is no paid overtime, but authorities give compensatory time off for overtime work.

The law establishes certain rudimentary safety and health standards for workplaces, which the labor ministry is responsible for enforcing. The law also covers nonworkers who are lawfully on the premises or within the workplace during work hours. The law contains provisions for the identification and assessment of, and risk control for, workplace hazards and hazardous substances.

In January the Labor Ministry issued a public notice clarifying the list of hazardous work prohibited for children.

Safety laws do not generally apply to agricultural service rendered to the matai or work in a family enterprise. Government employees have coverage under different and more stringent regulations, which the Public Service Commission enforced adequately.

Independent observers reported that the Labor Ministry did not strictly enforce safety laws, except when accidents highlighted noncompliance. It investigated work accidents when it received reports. The number of inspectors was generally sufficient to deter violations. Penalties were sufficient to deter violations.

Many agricultural workers had inadequate protection from pesticides and other dangers to health. Government education and awareness programs sought to address these concerns by providing appropriate training and equipment to some agricultural workers.

The Labor Ministry investigates any potential labor law violations in response to complaints. The police and education ministries may assist if needed; the PSC handles all government labor matters.

The commissioner of labor investigates reported cases of hazardous workplaces. Workers are legally able to remove themselves from situations that endanger health or safety without jeopardy to their employment.