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# 2022 Country Reports on Human Rights Practices: Tonga

## TRANSLATIONS

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## EXECUTIVE SUMMARY

The Kingdom of Tonga is a constitutional monarchy. The Legislative Assembly, a parliamentary body consisting of 17 popularly elected members and nine nobles selected by their peers, elects the prime minister. Following the November 2021 election, which international observers characterized as generally free and fair, then Prime Minister Pohiva Tu'i'onetoa declined to seek reelection, and Siaosi Sovaleni was selected as new prime minister. While the prime minister and his cabinet are responsible for most government functions, King Tupou VI, the nobility, and their representatives retain significant authority.

The Tonga Police Force maintains internal security and reports to the Ministry of Police and Fire Services. Civilian authorities maintained effective control over the security forces. Members of the security forces committed few abuses.

Significant human rights issues included credible reports of: serious government corruption; and the existence of law criminalizing consensual same-sex sexual conduct between adults, al<sup>t</sup> it is not enforced.

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There were reports of government corruption, for which there was some impunity. The government took steps to prosecute and punish officials who committed human rights abuses or engaged in corruption.

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### Section 1.

## Respect for the Integrity of the Person

### **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, AND OTHER RELATED ABUSES**

The law prohibits such practices, and there were no credible reports that government officials employed them. Impunity was not a significant problem in the security forces.

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

Hu'atolitoli Prison and its psychiatric facility on the country's main island were overcrowded as societal substance abuse and mental illness continued to generate pressure for space in the prison system.

**Abusive Physical Conditions:** In 2021 Hu'atolitoli Prison cells built for one individual were holding up to four persons and the prison lacked a facility to house women psychiatric patients separately from other prisoners. It is not known whether these conditions persisted during the year.

**Administration:** Authorities may investigate credible allegations of mistreatment. In recent years church leaders visited inmates approximately four to six times a week.

**Independent Monitoring:** The government permitted monitoring visits by international human rights observers, although there were no requests for such visits in recent years as the country's borders, shut when the pandemic struck in 2020, remained closed until August 2.

**Improvements:** In May the Prison Services completed new water supply systems designed to improve prisons' water facilities.

## **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**

Police may arrest suspects without a warrant during the commission of a crime; otherwise, authorities apprehend suspects with warrants issued by a local magistrate. In either case authorities brought those arrested before a local magistrate within 24 hours, including on weekends and holidays, for judicial determination of the legality of the detention. Authorities promptly informed 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 to arrested persons by counsel, family, and others 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, but is not required, to appoint a pro bono lawyer.

## **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 and 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. There is no provision for public defenders, but local lawyers accepted pro bono cases on an ad hoc basis.

## **Political Prisoners and Detainees**

There were no reports of political prisoners or detainees.

## **Civil Judicial Procedures and Remedies**

Citizens may seek redress through domestic courts for any abuse 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.

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### Section 2.

## **Respect for Civil Liberties**

### **A. FREEDOM OF EXPRESSION, INCLUDING FOR MEMBERS OF THE PRESS AND OTHER MEDIA**

The constitution provides for freedom of expression, including for members of the press and other media, and the government generally respected these rights. An independent media, an effective judiciary, and a functioning democratic political system generally combined to promote freedom of expression, including for members of the media.

**Censorship or Content Restrictions for Members of the Press and Other Media, including**

**Online Media:** Independent media were active and expressed a wide variety of views without restriction, although some self-censorship occurred among journalists who feared being bankrupted by lawsuits brought by politicians.

Media outlets reported on political developments and high-profile court cases, but privately owned media exercised self-censorship when covering high-profile individuals. In recent years censors appointed by the board of the state-owned Tonga Broadcasting Commission (TBC) reviewed all TBC programming prior to broadcast. It is not known whether the practice continued during the year. Journalists and media watchdogs remained concerned about the implications for media independence of regulations on the unlawful provision of false and misleading information, and on noncompliance with license conditions, including a regulation imposing a significant fine for publishing or broadcasting sensitive information.

**Internet Freedom**

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

Legislation provides punishment for cyberbullying infractions with substantial fines, up to three years' imprisonment, or both. Repeated offenses could incur punitive fines, up to five years' imprisonment, or both. A service provider failing to prevent the abuse of its network for cyberbullying, to assist police inquiries into cyberbullying, or to comply with a court-issued warrant to provide access to stored data, information, or documents could face a punitive fine.

**B. FREEDOMS OF PEACEFUL ASSEMBLY AND ASSOCIATION**

The constitution provides for the freedoms of peaceful 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/international-religious-freedom-reports/>.

## D. FREEDOM OF MOVEMENT AND THE RIGHT TO LEAVE THE COUNTRY

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

## E. PROTECTION OF REFUGEES

In recent years the government cooperated with the Office of the UN High Commissioner for Refugees and other humanitarian organizations in providing protection to refugees, asylum seekers, or other persons of concern when they were present in the country.

**Access to Asylum:** The law does not provide for the formal granting of asylum or refugee status, and the government has not established a system for providing protection to refugees. The principal immigration officer has wide discretionary powers under immigration laws and may allow noncitizens to remain in the country, including on humanitarian grounds.

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### 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 and based on universal and equal suffrage.

## ELECTIONS AND POLITICAL PARTICIPATION

**Recent Elections:** The country held its most recent parliamentary election in November 2021. International observers deemed the election to be generally free and fair. Following the decision by then Prime Minister Pohiva Tu'i'onetoa not to seek continuation in office, Siaosi Sovaleni Hu'akavameiliku was elected as new prime minister in December 2021.

Parliament has 26 elected members; citizens directly 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. The law accords these cabinet members parliamentary seats for the duration of their tenure in the cabinet.

The king retains significant powers, including a veto on new laws (with no possibility of parliamentary override) and the right to dissolve parliament.

**Participation of Women and Members of Minority Groups:** No laws limit participation of women or members of historically marginalized groups in the political process, and they did participate. A variety of institutional and cultural factors kept women's representation low. Among these were the reservation of nine seats in parliament for nobles, all of whom are men; continuing male domination of informal local government systems, which deny women "entry-level" positions in politics; and cultural attitudes across the population regarding women's proper roles and competence. The rate of registration to vote among women was the same as the rate among men, and women have the same legal rights to run for election. Voters did not elect any women to parliament in November 2021, a decline from the prior 2017 election when two women were elected to parliament. A woman may become queen, but the constitution forbids women from inheriting hereditary noble titles or becoming chiefs.

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

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#### 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. There were reports of government corruption during the year.

**Corruption:** In May the Supreme Court convicted then Deputy Prime Minister Poasi Tei, then Minister for Finance Tatafu Moeaki, and then Minister for Internal Affairs Sangster Saulala of bribing constituents with food and money during the 2021 election campaign. After losing their appeals on August 9, they were dismissed from the Legislative Assembly. On November 3, a by-election filled the seats they had vacated.

Also in May, the Supreme Court convicted former Prime Minister Pohiva Tu'i'onetoa of bribery for promising a women's advocacy group 50,000 Tongan pa'anga (\$21,200). The Court of Appeal,

however, upheld his appeal in August, and he retained his seat in the Legislative Assembly.

On October 11, the Court of Appeal quashed the convictions of spouses and former cabinet ministers Akosita Lavulavu and Etuate Lavulavu, directing that they be freed and ordering the case back to the Supreme Court for retrial. Convicted of fraud and attempted bribery of a court witness, the couple was sentenced to six years' imprisonment in July 2021.

The Office of the Auditor General reports directly to the Legislative Assembly, aiming to enhance accountability and transparency in all government activities and improve public-sector performance. The Office of the Ombudsman is empowered to investigate official corruption. Both entities actively collaborated with other government agencies but were not considered by civil society groups to be independent of political control, operationally efficient, or sufficiently resourced.

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#### Section 5.

### Governmental Posture Towards International and Nongovernmental Investigation of Alleged Abuses 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 often were cooperative and responsive to their views.

**Government Human Rights Bodies:** The Office of the Ombudsman works to protect the rights of every citizen in the country, including members of the public service and vulnerable members of society such as women, children, prisoners, and persons with disabilities.

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#### Section 6.

### Discrimination and Societal Abuses

#### **WOMEN**



**Rape and Domestic Violence:** Rape of women is punishable by a maximum of 15 years in prison. “Indecent assault” of men is punishable by a maximum of 10 years’ imprisonment. The law recognizes spousal rape. Domestic violence is a crime punishable by a maximum of 12 months in prison, a substantial fine, or both. Repeat offenders face a maximum penalty of three years in prison or a steeper maximum fine. The law provides for protection from domestic violence, including by issuance of protection orders; clarifies the duties of police; and promotes the health, safety, and well-being of domestic-violence victims.

In April Ofa Guttenbeil-Likili, director of the Women and Children Crisis Center, reported that after the massive volcanic eruption and 50-foot tsunami on January 15 and the 26-day lockdown that followed, the number of domestic- and family-violence cases handled by the center approximately doubled. The deputy police commissioner reportedly observed that while the incidence of other crimes had diminished, domestic violence was on the rise.

Police investigated reported rape cases, and the government prosecuted these cases. In two cases prosecuted in May, a policeman was sentenced to seven years in prison for raping a woman, age 18, while she was in custody, and another man was sentenced to five years in prison for the attempted rape of a woman, age 20, in 2021.

The government also provided financial support to nongovernmental organizations (NGO) that assist survivors of sexual violence. The police domestic-violence unit has a “no-drop” policy for complaints of domestic assault; once filed, domestic-violence cases cannot be withdrawn and must proceed to prosecution in the magistrates’ courts. The Ministry of Police, local communities, churches, youth groups, the Women and Children Crisis Center, and other NGOs conducted training programs for government agencies and civil society groups on matters such as human rights, child abuse, sexual harassment, violence against women, and domestic violence.

Police worked with the National Center for Women and Children and with the Women and Children Crisis Center to provide shelter for abused women and for girls and boys younger than age 14. The Justice Department’s Family Legal Protection Aid Center operated an online portal to provide anonymous access for survivors of domestic or gender-based violence to legal information and counsel, without compromising the confidentiality of their cases. Some young girls were compelled by parental pressure to marry men who raped them to prevent family shame.

**Sexual Harassment:** Sexual harassment is not a crime under the law, but physical sexual assault can be prosecuted as indecent assault. Complaints received by the police domestic violence unit indicated that sexual harassment of women was a common problem.

**Reproductive Rights:** There were no reports of coerced abortion or involuntary sterilization on the part of government authorities.

There were no legal or social barriers to accessing contraception, but some religious beliefs and cultural barriers, including the stigma attached to certain health topics, caused reluctance among women to visit clinics offering modern methods. The Guttmacher Institute, an international NGO, reported that in 2019, among women ages 15 to 49 who wanted to avoid a pregnancy, 49 percent had an unmet need for such methods. No government policies or legal, social, or cultural barriers adversely affected access to skilled attendance during pregnancy and childbirth. According to a 2019 Multiple Indicator Cluster Survey carried out by the government and supported by UNICEF, approximately 16 percent of women who reported menstruating in the previous 12 months also reported they did not participate in social activities, school, or work while menstruating. The government provided access to health care, including emergency contraception, to survivors of sexual violence or incest who sought it within five days of the crime.

**Discrimination:** Inheritance laws, especially those concerned with land, discriminate against women. Women may lease land, but inheritance rights pass through male heirs only; a male child born out of wedlock has precedence over the deceased's widow or daughter. If there are no male relatives, a widow is entitled to remain on her husband's land if 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 against women with respect to employment and wages occurred (see section 7.d.).

## **SYSTEMIC RACIAL OR ETHNIC VIOLENCE AND DISCRIMINATION**

The law restricts ownership and operation of retail food stores to citizens. Ethnic Chinese who are naturalized Tongan citizens dominated the retail sector in many towns. There were reports in recent years of crime and societal discrimination directed at members of the Chinese minority.

## CHILDREN

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

**Education:** Education to age 18 is compulsory but not, by law, free. There is a policy, however, that provides free education to all children between ages six and 14.

**Child Abuse:** There are laws against child abuse. If a case is reported to police, the child is removed from the parents or guardians and placed in the care of either the Women and Children Crisis Center or the National Center for Women and Children while police investigate. The Women and Children Crisis Center continued to implement a variety of child-abuse awareness programs at schools from primary to tertiary levels.

**Child, Early, and Forced Marriage:** The legal minimum age for marriage is 15 but boys and girls ages 15-17 require parental consent to marry. According to international civil society network Girls Not Brides, 6 percent of boys and 6 percent of girls marry before age 18. According to Girls Not Brides and other NGOs, child marriages were a result of several factors driven by gender inequality. Some young girls were compelled by parental pressure to marry men who raped them to prevent family shame. Teenage pregnancy forced others to marry to preserve family honor.

**Sexual Exploitation of Children:** The minimum age for consensual sex is 15. Perpetrators who sexually abuse children 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. In August a man, age 62, was sentenced to seven years’ imprisonment for six counts of “indecent assault” of a child, age 12. There were anecdotal reports of children being exploited in sex trafficking. The law prohibits the procurement of women and girls younger than age 21 for commercial sexual exploitation but does not criminalize the procurement of boys for the same purpose. The law also prohibits child pornography with penalties of a substantial fine or a maximum of 10 years in prison for individuals and a steeper maximum fine for corporations; however, the use of children younger than age 14 in the production of pornography is not criminally prohibited. Authorities enforced the laws against procurement of children for commercial sexual exploitation and child pornography.

## ANTISEMITISM

There was no known resident Jewish community and there were no known reports of antisemitic acts.

## TRAFFICKING IN PERSONS

See the Department of State's *Trafficking in Persons Report* at <https://www.state.gov/trafficking-in-persons-report/>.

## ACTS OF VIOLENCE, CRIMINALIZATION, AND OTHER ABUSES BASED ON SEXUAL ORIENTATION, GENDER IDENTITY OR EXPRESSION, OR SEX CHARACTERISTICS

**Criminalization:** "Sodomy" (anal sex) between men is listed as a crime with a maximum penalty of 10 years in prison and whipping, but there were no reports of prosecutions under this provision for consensual same-sex sexual conduct between adults.

**Violence against LGBTQI+ Persons:** Social stigma or intimidation may have prevented reporting of incidents of violence or discrimination.

**Discrimination:** No law specifically prohibits discrimination based on sexual orientation, gender identity or expression, or sex characteristics, or recognizes lesbian, gay, bisexual, transgender, queer, and intersex (LGBTQI+) individuals, couples, and their families. No law addresses hate crimes. No criminal justice mechanisms exist to aid in the prosecution of bias-motivated crimes against LGBTQI+ individuals. Society accepted a subculture of transgender dress and behavior, and a prominent NGO's annual festival highlighted transgender identities.

**Availability of Legal Gender Recognition:** Legal gender recognition, by which the government allows individuals to change their gender identity marker on legal and identifying documents to bring them into alignment with their gender identity, was not available.

**Involuntary or Coercive Medical or Psychological Practices Specifically Targeting LGBTQI+ Individuals:** There was no information available whether so-called conversion therapy was practiced to change a person's sexual orientation or gender identity or expression.

**Restrictions of Freedom of Expression, Association, or Peaceful Assembly:** There were no restrictions on those speaking out about LGBTQI+ matters such as so-called antigay propaganda laws, “hate speech” laws, or restrictions on the ability of LGBTQI+ organizations to legally register or convene events such as Pride festivities.

## **PERSONS WITH DISABILITIES**

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

There are limited provisions for accessible or specialized transport on roads and at sea for persons with disabilities, causing many to be confined in their homes, unable to access health services, attend school, or be employed. Public buses are not accessible and individuals in wheelchairs who can stand or walk a short distance still need help to board and depart buses. Accessibility to maritime transportation is poor and passengers with disabilities traveling to and from the outer islands relied on family and vessel staff members to physically lift them onto the vessel, which could be hazardous. According to a Universal Periodic Review by international legal nonprofit Just Atonement released on October 2, the government had yet to address the needs of individuals with disabilities, including ensuring their rights to housing, employment opportunity, health care, transportation, and access to education.

A Ministry of Education and Training 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.

The National Council on Disability and the Ministry of Internal Affairs maintained a program to provide modest financial assistance to persons with disabilities.

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### 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. There was no dispute resolution mechanism in place specifically for labor disputes, although persons could take cases to court or refer cases to the Office of the Ombudsman. The law does not include a right to collective bargaining, and there were no reports it occurred.

The government did not take effective action to implement and enforce the law, but employers generally respected freedom of association. Penalties for legal violations include criminal fines, which were not commensurate with those under other laws involving denials of civil rights, such as discrimination, and which were seldom applied. Administrative and judicial procedures were subject to lengthy delays and appeals.

Trade unions and a variety of other worker associations existed. For example, the Friendly Islands Teachers Association and the Tonga Nurses Association were legally incorporated as civil society organizations, and the Friendly Islands Seafarer's Union Incorporated was affiliated with the International Transport Workers Federation. The Public Service Association acted as a de facto union representing all government employees.

## **B. PROHIBITION OF FORCED OR COMPULSORY LABOR**

The law does not prohibit all forms of forced or compulsory labor. Protections do not apply to workers in domestic labor, and debt bondage is not specifically prohibited. The government took no action to prevent forced labor or to prosecute perpetrators. Penalties were criminal but were not commensurate with those for analogous crimes, such as kidnapping. There were unconfirmed anecdotal reports of forced labor among women and children in domestic service (see section 7.c.).

Also see the Department of State's *Trafficking in Persons Report* at <https://www.state.gov/trafficking-in-persons-report/>.

## **C. PROHIBITION OF CHILD LABOR AND MINIMUM AGE FOR EMPLOYMENT**

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 does not prohibit discrimination based on any personal characteristic, feature, or group affiliation, although the constitution broadly prohibits discrimination based on disability. The government did not take effective steps to prevent discrimination or respond to reports of discrimination. Penalties were never applied against violators. Discrimination against women in employment and wages occurred. 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. Persons with disabilities experienced discrimination in hiring and access to the workplace.

## E. ACCEPTABLE CONDITIONS OF WORK

**Wage and Hour Laws:** There is no minimum wage, but the Ministry of Commerce, Consumer, Trade, Innovation, and Labor sets minimum wage guidelines.

The law establishes a 40-hour workweek but does not provide for overtime pay or for at least three paid holidays. Some employers, including some government offices, paid their workers overtime, and most provided paid holidays.

**Occupational Safety and Health:** The law stipulates occupational safety and health (OSH) standards for each sector, such as fisheries and agriculture. These standards were current and appropriate for main industries and covered persons in domestic service. Protected workers may remove themselves from situations that endanger health or safety without jeopardizing their employment.

**Wage, Hour, and OSH Enforcement:** The government did not effectively enforce the law. Enforcement of wage, hour, and OSH regulations was inconsistent. Penalties for violations were not commensurate with those for similar crimes, such as fraud or negligence. Penalties were rarely applied against violators. The government did not have inspectors to enforce compliance.

**Informal Sector:** A large proportion of the population was in the informal sector, specifically in agricultural activities and small-scale manufacturing, but official figures for the size of the

informal economy were not available. Recent reports estimated that approximately 56 percent of workers in the informal sector were casually or temporarily employed, and 36 percent were employed part-time. The law stipulates those part-time employees working at least a 15-hour workweek should be covered by wage, hour, and OSH laws. The Ministry of Commerce, Consumer, Trade, Innovation, and Labor has the authority to enforce labor standards in all sectors, including the informal economy; however, there were no inspectors to enforce compliance. Penalties for violations took the form of monetary fines, which were not effective because they were not applied.

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