

# **Tonga 2023 Human Rights Report**

## **Executive Summary**

There were no significant changes in the human rights situation in Tonga during the year.

Significant human rights issues included credible reports of serious government corruption, and a law criminalizing consensual same-sex sexual conduct between adults, although it was not enforced.

The government took credible steps to identify and punish officials who may have committed human rights abuses.

## **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, including extrajudicial 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 prohibited such practices, and there were no credible reports that government officials employed them.

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

Hu'atolitoli Prison and its psychiatric facility on the country's main island were overcrowded as 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 hold women psychiatric patients separately from other prisoners. It was not known whether these conditions persisted during the year.

**Administration:** There were procedures in place for the investigation of credible allegations of mistreatment.

**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, 2022. In prior years church leaders visited inmates approximately four to six times.

## **d. Arbitrary Arrest or Detention**

The constitution prohibited arbitrary arrest and detention and provided for the right of any person to challenge the lawfulness of their arrest or detention in court, and the government generally observed these requirements.

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

Authorities generally 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 provided for a functioning bail system. Authorities generally facilitated access to arrested persons by counsel, family, and others. No legal aid framework existed to provide services for the indigent. Accused persons had to generally represent themselves if they could not afford legal counsel, although in more serious cases the judge could, but was not required, to appoint a pro bono lawyer.

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

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

## **Trial Procedures**

The constitution provided 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 was 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.

## **f. Transnational Repression**

Not applicable.

## **g. Property Seizure and Restitution**

Not applicable.

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

The constitution prohibited such actions, and there were no reports that the government failed to respect these prohibitions.

## **Section 2. Respect for Civil Liberties**

### **a. Freedom of Expression, Including for Members of the Press and Other Media**

The constitution provided 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 media members.

**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.

Media outlets reported on political developments and high-profile court cases, but privately owned media exercised self-censorship when covering high-profile individuals.

The board of the state-owned Tonga Broadcasting Commission appointed internal censors to review all its programming prior to broadcast, but the extent of their reviews was unknown. Journalists and media watchdogs remained concerned regarding 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.

**Libel/Slander Laws:** The 2020 revised Defamation Act criminalized defamation of persons with a fine not exceeding \$1,000 and in default of payment to imprisonment for any term not exceeding 1 year. Any person defamed could bring a civil action claiming damages in respect of such defamation. Some self-censorship occurred among journalists who feared being bankrupted by lawsuits brought by politicians.

## **Internet Freedom**

The government did not restrict or disrupt access to the internet or censor online content.

## **b. Freedoms of Peaceful Assembly and Association**

The constitution provided 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 [www.state.gov/religiousfreedomreport/](https://www.state.gov/religiousfreedomreport/).

## **d. Freedom of Movement and the Right to Leave the**

## Country

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

### e. Protection of Refugees

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.

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

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

The constitution and law provided 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

**Abuses or Irregularities in Recent Elections:** The country held its most recent parliamentary election in November 2021. International observers deemed the election to be generally free and fair.

**Participation of Women and Members of Marginalized or Vulnerable Groups:** No laws limited participation of women or members of marginalized or vulnerable groups in the political process; however, 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 were men; continuing male domination of informal local government systems, which denied women entry-level positions in politics; and attitudes across the population regarding women's proper roles and competence. A woman could become queen, but the constitution forbade women from inheriting hereditary noble titles or becoming chiefs.

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

## Section 4. Corruption in Government

The law provided criminal penalties for corruption by officials, and the government generally implemented the law effectively. There were reports of government corruption during the year.



**Corruption:** The Office of the Auditor General reported 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 was 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.

In February the Legislative Assembly approved the Anti-Corruption Commissioner Amendment Bill 2023, paving the way for the establishment of an Anti-Corruption Commissioner's Office.

## **Section 5. Governmental Posture Towards International and Nongovernmental Monitoring and Investigation of Alleged Abuses of Human Rights**

Domestic and international human rights groups generally operated without government restriction to monitor or investigate human rights conditions or cases and publish their findings. Government officials were often cooperative and responsive to the views of these groups.

**Government Human Rights Bodies:** The Office of the Ombudsman worked to protect the rights of citizens. Civil society groups did not consider the ombudsman to be independent and effective.

## Section 6. Discrimination and Societal Abuses

### Women

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

The government also provided financial support to nongovernmental organizations (NGOs) that assisted survivors of sexual violence. The police domestic-violence unit had a “no-drop” policy for complaints of domestic assault; once filed, domestic violence cases could not be withdrawn and had to proceed to prosecution in the magistrates’ courts.

**Other Forms of Gender-based Violence or Sexual Harassment:** Sexual harassment was not a crime under the law, but physical sexual assault could be prosecuted as indecent assault. Complaints received by the police domestic violence unit indicated sexual harassment of women was a common problem.

**Discrimination:** Inheritance laws, especially those covering land, discriminated against women. Women could lease land, but inheritance rights passed through male heirs only; a male child born out of wedlock took precedence over the deceased's widow or daughter. If there were no male relatives, a widow was entitled to remain on her husband's land if she did not remarry and remained 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. 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. The gender pay gap, the skills gap, and fewer opportunities to advance in their careers were barriers to women's economic security.

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

There were no legal 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 contraceptive 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. 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 and postexposure prophylaxis, to survivors of sexual violence or incest who sought it within five days of the crime.

## **Systemic Racial or Ethnic Violence and Discrimination**

The law restricted ownership and operation of retail food stores to citizens. Ethnic Chinese who were 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**

**Child Abuse:** There were laws against child abuse and the government generally enforced laws effectively. If a case was reported to police, the child was 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 investigated. 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 was

15, but boys and girls ages 15-17 required parental consent to marry. No data was available on enforcement of the law. According to international civil society network Girls Not Brides, 3 percent of boys and 10 percent of girls married 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 was 15. Persons who sexually abused children could be charged with “carnal knowledge of a child under age 12,” which carried a maximum penalty of life in prison, or “carnal knowledge of a child under 15,” which carried a maximum penalty of five years in prison. There were anecdotal reports of children being exploited in sex trafficking. The law prohibited the procurement of women and girls younger than age 21 for commercial sexual exploitation but did not criminalize the procurement of boys for the same purpose. The law also prohibited 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 abuse of children younger than age 14 in the production of pornography was 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 incidents.

## 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:** Same-sex sexual activity was prohibited under the Criminal Offences Act, which criminalized acts of “sodomy.” This provision carried a maximum penalty of 10 years’ imprisonment. While this provision used gender-neutral language, only male, same-sex, sexual activity seemed to be generally acknowledged. There were no reports of prosecutions under this provision for consensual same-sex sexual conduct between adults.

**Violence and Harassment:** Social stigma or intimidation could have prevented reporting of incidents of violence or discrimination.

**Discrimination:** The law did not prohibit discrimination based on sexual orientation, gender identity or expression, or sex characteristics, or

recognize lesbian, gay, bisexual, transgender, queer, and intersex (LGBTQI+) couples, and their families. 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 allowed individuals to change their gender identity marker on legal and identifying documents to bring them into alignment with their gender identity, was not available. There were no nonbinary or intersex options on government documents.

**Involuntary or Coercive Medical or Psychological Practices:** There were no reports of involuntary or coercive medical practices used with LGBTQI+ persons. There was no information available whether so-called conversion therapy was practiced to change a person's sexual orientation or gender identity or expression. There was no information available whether medically unnecessary and irreversible normalization surgeries were performed on children or on nonconsenting adult intersex persons.

**Restrictions of Freedom of Expression, Association, or Peaceful Assembly:** There were no restrictions on speaking out regarding 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 prohibited discrimination based on disability, but no laws specifically prohibited discrimination against persons with physical, sensory, intellectual, or mental disabilities. There were no legally mandated services or government programs for adults with disabilities, including for building accessibility or access to communications and information.

According to an October 2022 Universal Periodic Review by international legal nonprofit Just Atonement, the government had yet to address the needs of individuals with disabilities, including ensuring their rights to housing, employment opportunity, health care, transportation, and education.

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

Although there were limited provisions for accessible or specialized transport on roads and at sea for persons with disabilities, many were confined in their homes, unable to access health services, attend school, or be employed. Public buses were not accessible. Accessibility to maritime transportation was poor and passengers with disabilities traveling to and from the outer islands generally had to be physically lifted onto the vessel, which could be hazardous.



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.

Persons with disabilities experienced discrimination in hiring and access to the workplace.

## **Section 7. Worker Rights**

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

The law provided for the right to form and join independent unions, but the government did not promulgate regulations on the formation of unions, collective bargaining, or the right to strike. No law specifically prohibited antiunion discrimination or provided 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 did 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 included 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**

See the Department of State's annual *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 (see Section 6)**

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

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

The law established a 40-hour workweek but did 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 stipulated occupational safety and health (OSH) standards for each sector, such as fisheries and agriculture. These standards were appropriate for main industries and covered persons in domestic service. Protected workers could remove themselves from situations that endangered health or safety without jeopardizing their employment.

**Wage, Hour, and OSH Enforcement:** The government did not effectively enforce the law. 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.

A large proportion of the population was in the informal sector, specifically in agriculture 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 stipulated that 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 had the authority to enforce labor standards in all sectors, including the informal economy; however, there were no inspectors to enforce compliance.