

SAMOA 2017 HUMAN RIGHTS REPORT

EXECUTIVE SUMMARY

Samoa is a constitutional parliamentary democracy that incorporates traditional practices into its governmental system. In 2016 voters elected a new parliament, confirming Prime Minister Tuilaepa Sailele Malielegaoi in office. Although the unicameral parliament is elected by universal suffrage, members may only be “matai” (heads of extended families). 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.

Civilian authorities maintained effective control over the security forces.

The most significant human rights issues included: limits on non-matai rights to participate in political processes; domestic violence; child abuse; criminalization of sexual activity between men, although the law was not enforced; and 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 individual police officials, such as the use of physical violence towards detainees.

Prison and Detention Center Conditions

Overall prison conditions were harsh and remained below international standards.

Physical Conditions: The Tafaigata men's prison was overcrowded with more than 300 inmates in a facility with an official capacity of 260. Pretrial detainees were held together with convicts. Authorities made only basic provisions for food, water (including potable water), and sanitation. Cell lighting and ventilation remained poor. Lights remained on all night.

Physical conditions in the separate Tafaigata women's prison, including ventilation and sanitation, generally were better than in the men's prison. Authorities housed juveniles (younger than 26 years) 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.

One male Tafaigata prisoner committed suicide by hanging in August, according to prison officials. The family disputed the claim, citing a number of bruises, cuts, scrapes, and swelling over several parts of the prisoner's body.

Administration: The prison system faced challenges in its ability to account for 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, including UN organizations and diplomatic missions.

Improvements: In September construction began on a new main prison facility to replace Tafaigata.

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/her arrest or detention in court, and the government generally observed these requirements.

Role of the Police and Security Apparatus

The Samoa Police Department, under the Ministry of Police and Prison Services, maintains internal security. Local councils enforce rules and security within individual villages. Civilian authorities maintained effective control over police, and the government has effective mechanisms to investigate and punish abuse and corruption. There were no reports of impunity involving police. Insufficient capacity limited police effectiveness.

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. The government provided indigent detainees with a lawyer upon request. The government did not hold suspects incommunicado or under house arrest.

Detainee's Ability to Challenge Lawfulness of Detention before a Court: Persons arrested or detained are entitled to challenge in court the legal basis or arbitrary nature of their detention and obtain prompt release and compensation if the court finds authorities unlawfully detained them.

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; in such trials 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 have 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 citizens.

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 the local council 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 local councils may not infringe upon villagers' freedom of religion, speech, assembly, or association. Village councils, however, consistently ignored this ruling.

An amendment to the law on village councils in January sought to ensure that the powers exercised by the village council are in line with the constitution. The amendment provides more detail on what is a punishable offense and steps to be taken to carry out a punishment.

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 that the 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. There were reports some village councils banished individuals or families from villages.

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 these rights. 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: A 2012 law on tourism development authorizes the Samoa Tourism Authority (STA) to exercise “lawful controls” over publication by any person of information about the tourism industry deemed 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 during the year.

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. Internet access was widely available in most of the country via cellular technology, but the high cost limited internet access for much of the population outside the capital.

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 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.

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 refugee status.

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.

Elections and Political Participation

Recent Elections: Observers considered the general election held in March 2016 to be fair. The Human Rights Protection Party retained government control for a seventh consecutive term, winning 47 of 50 seats. The Tautua Samoa Party controlled only three seats, not enough to form an official opposition. Following the election, plaintiffs filed six electoral petitions with the Supreme Court on grounds including bribery, treating, and gifting 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 21 years 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 were appointed, not elected, to the councils.

In addition to the restrictions favoring matai, the 2016 election was the first since parliament passed an electoral amendment requiring 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 in the elections. 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 monotaga 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. Such subjective disqualifications were seen by some as human rights abuses.

Participation of Women and Minorities: No laws limit participation of women and/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 10.5 percent are women. Of the five female members of parliament, the ruling party appointed Fiame Naomi Mataafa 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.

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 Public Service Commission. The Ombudsman's Office and the Public Service Commission 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 controller and auditor general's reports to parliament from 2013 to 2016 were only submitted to parliament in December 2016.

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, which published the country's first *State of Human Rights Report* in August 2015.

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

Women

Rape and Domestic Violence: Rape is illegal, but there is no legal provision against spousal rape. The penalties for rape range from two years' to life imprisonment, but the court has never imposed a life sentence. Many cases of rape went unreported because societal attitudes discouraged such reporting. The courts treated rape seriously, and the conviction rate generally was high.

The constitution prohibits abuse of women, but societal attitudes tolerated domestic abuse. Social pressure and fear of reprisal typically caused such abuse to go unreported. Village councils typically punished domestic violence offenders only if they considered the abuse extreme, such as when there were visible signs of physical harm.

When police received complaints from abused women, authorities investigated and punished the offender, including imprisonment. Authorities charge domestic violence as common criminal assault, with a maximum penalty of one year's imprisonment. The government acknowledged the problem was of significant

concern. The Ministry of Police has a nine-person Domestic Violence Unit that works in collaboration with 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, involuntary sterilization, or other coercive population control methods. Estimates on maternal mortality and contraceptive prevalence are available at: www.who.int/reproductivehealth/publications/monitoring/maternal-mortality-2015/en/.

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

Children

Birth Registration: A child derives citizenship 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. Press reports indicated an increase in reported cases of child abuse, especially of incest and indecent assault cases, which appeared to be due to citizens' increased awareness of the importance of reporting physical, emotional, and sexual abuse of children. The government aggressively prosecuted such cases. The law prohibits corporal punishment in schools; a teacher convicted of corporal punishment of a student may face up to a one-year prison term.

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

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

Sexual Exploitation of Children: Sexual abuse of children remained a problem. The minimum age for consensual sex is 16 years. Under the law the maximum penalty for sexual relations with children younger than 12 years is life imprisonment and for children between ages 12 and 15 years 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.

The Ministry of Justice and Courts Administration and the Ministry of Education, in collaboration with NGOs, carried out educational activities to address domestic violence, inappropriate behavior between adults and children, and human rights awareness. In November a male schoolteacher was found guilty of raping a 13-year-old female primary school student on school grounds.

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.

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

No law prohibits discrimination against physical, sensory, intellectual, and mental disabilities in the provision of public services. 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.

There is a law against discrimination with respect to employment based on disability (see section 7.d.). 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 created specifically to educate students with disabilities.

National/Racial/Ethnic Minorities

During the year three villages placed a ban on setting up Chinese-owned retail shops on customary land within the village. This was in response to 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.

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 “to have been 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 the freedom of association. The Public Service Association functioned as a union for all government workers, who made up approximately 8,000 of the estimated 25,000 workers in the formal economy. 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 bargaining on wages. Arbitration and mediation procedures were in place to resolve labor disputes, although such disputes rarely arose.

Workers’ organizations were generally independent of the government or employers, and there were no reported violations of freedom of association or collective bargaining. 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.

The law states that forced labor is punishable by imprisonment. Aside from this cultural exception and street vending by children, forced labor was not a major problem. The Ministry of Commerce, Industry, and Labor (MCIL) received no complaints and found no violations of forced labor during inspections conducted during the year. Penalties were reportedly sufficient to deter violations.

c. Prohibition of Child Labor and Minimum Age for Employment

The law prohibits employing children younger than 15 years except in “safe and light work.” 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 within school hours of 8 a.m. to 2 p.m. The law restricts vending by school-age children (younger than 14 years) if it interferes with their school attendance, participation in school activities, or educational development.

There were no reliable statistics available on the extent of child labor, but it occurred largely in the informal sector. Children frequently sold goods and food on street corners. The government has not definitively determined whether this practice violates the country's labor laws, which cover only persons who have a place of employment, and local officials generally tolerated it. The problem of child street vending attracted significant media coverage and public outcry.

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 www.dol.gov/ilab/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 in any employment policies, procedures, or practices 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. The MCIL received no complaints regarding unfair hiring practices. 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.

e. Acceptable Conditions of Work

There were two minimum wages, one for the private sector and one for the public sector. Both minimum wages were below the official estimate of the poverty

income level for a household. 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. The law stipulates a standard workweek of a maximum of 40 hours, or eight hours per day (excluding mealtimes), and prohibits compulsory overtime. For the private sector, the law specifies overtime pay at time and a half, with double time for work on Sunday and public holidays, and triple time for overtime on such days. For the public sector, there is no paid overtime, but authorities give compensatory time off for overtime work. There are generally nine paid public holidays per year.

The law establishes certain rudimentary safety and health standards for workplaces, which the MCIL is responsible for enforcing. The law also covers persons who are not workers but who are lawfully on the premises or within the workplace during work hours. The 2014 Occupational Safety and Health Regulations Act contains provisions for the identification, assessment, and risk control for workplace hazards and hazardous substances, but it does not contain a list of hazardous occupations or work.

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 MCIL did not strictly enforce safety laws, except when accidents highlighted noncompliance. It investigated work accidents when it received reports. The penalties and the number of inspectors were generally sufficient to deter violations.

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

The Ministry of Labor investigates any potential labor law violations in response to complaints. Other relevant government ministries can assist if needed.

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. The MCIL received reports of 19 work-related accidents during the year, one of which was a fatality.