

SAMOA 2020 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. Members of the security forces committed isolated abuses.

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 the worst forms of 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.

Impunity was not a significant problem in the security forces.

Prison and Detention Center Conditions

Prison conditions were harsh due to physical abuse.

Physical Conditions: The Tanumalala Prison has adequate ventilation, lighting, and sanitation. Pretrial detainees were held together with convicts. Authorities made only basic provision for food, water, and sanitation. During the year prisoner violence and the infection of two inmates with leprosy were reported.

Authorities formerly housed juveniles (prisoners younger than age 26) at the Olomanu Juvenile Center, where physical conditions generally were better than in adult facilities, but following a decision to turn that facility into a prison farm for adults, they transferred juveniles to Tanumalala. A former acting chief justice found juveniles at Tanumalala were held in heavily barred cells where they slept on a concrete floor without mats and blankets.

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

Administration: The prison system's difficulty in accounting for or effectively supervising inmates persisted. In March, 29 men escaped from Tanumalala in a mass prison break.

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.

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.

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 remained uncertain. In June the Supreme Court convicted three persons of arson and sentenced them to three years and nine months in prison. In October 2019 they had burned the home of Fialele Amataga, who had sought to bury his late wife on family land and had appealed to the courts after the village council denied his request. Amataga obtained a favorable ruling from the 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 during the year.

Libel/Slander Laws: Libel may be prosecuted as a criminal offense. Local media regarded the law as an obstacle to press freedom, and a blogger critical of the prime minister was sentenced to seven weeks' imprisonment for libel in 2019 in addition to other criminal charges.

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. 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.

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. Status and Treatment of Internally Displaced Persons

Not applicable.

f. Protection of Refugees

Since there were no requests for asylum or refugee status, the government had no interaction with the Office of the UN High Commissioner for Refugees (UNHCR), whose regional representation is based in Canberra, or with other humanitarian organizations in providing protection and assistance to asylum seekers and refugees. Government officials were cooperative with a number of domestic and international human rights groups dealing with a variety of other issues.

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.

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 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 poorly 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 Members of Minority Groups: No laws limit participation of women or members of minority groups 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 female 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 Mataafa served as deputy prime minister from 2016 to October, 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 isolated reports of government corruption. Officials infrequently engaged in corrupt practices with impunity. In February the Public Service Commission suspended Lefaoali'i Unutoa Auelua Fonoti, who as the head of the Office of the Regulator oversaw telecommunications, broadcasting, postal, and electricity services. An investigation led to charges of abuse of public funds and resources and failure to discharge duties, including using petty cash for personal purchases and directing staff to run personal errands. In May, Lefaoali'i resigned and issued a statement criticizing the commission for its handling of the 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 Public Service Commission. The Ombudsman's Office and the 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 latest publicly available report of the controller and auditor general's reports to parliament was for the 2014-15 fiscal year.

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 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.

The government acknowledged that rape and domestic abuse were of significant concern. The *National Public Inquiry into Family Violence*, released in 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 combating 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 on the part of government authorities.

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. In August a school principal was convicted and fined for caning six students with a hose as punishment for the students' posting pictures of themselves to social media wearing their school uniforms. Following the incident, the minister of education, sports, and culture publicly spoke out against corporal punishment.

The government aggressively prosecuted reported cases of child abuse.

Press reports indicated an increase in child abuse, 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.

Child, 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 girl is younger than age 16 or a boy 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, and there was a disturbing rise in the number of incidents reported by local media during the year. 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 Samoa 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.

Members of National/Racial/Ethnic Minority Groups

In July the Supreme Court sentenced an ethnic Samoan man to life imprisonment for assaulting and killing a person at a Chinese-owned business in 2019; there was at least one other attack on a Chinese-owned business in 2019. Observers felt Chinese were targeted partly because of their ethnicity. Several villages prohibit ethnic Chinese persons from owning shops on village-owned land (approximately 80 percent of the land in the country), measures enacted in response to the spread of Chinese-owned retail businesses.

Acts of Violence, Criminalization, 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. Although society generally accepted the traditional Polynesian transgender, nonbinary Fa’afafine community, which plays a prominent role in the country, 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 commensurate with those for other laws involving denials of civil rights, such as discrimination. 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 effectively enforced the law. Penalties were commensurate with those for other analogous serious crimes, such as kidnapping. 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 younger than 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. The law, however, is 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. Penalties were not commensurate with those for other analogous serious crimes, such as kidnapping. 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 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 commensurate to laws related to civil rights, such as election interference. The Labor Ministry received one complaint regarding unfair hiring practices during the year. The hiring and recruiting process for the private sector is outside 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. 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 government effectively enforced wage laws, and penalties were commensurate with those for similar crimes, such as fraud.

The law establishes certain rudimentary occupational safety and health (OSH) 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 2019 the Labor Ministry issued a public notice clarifying the types of hazardous work prohibited for children.

OSH 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 OSH laws, except when accidents highlighted noncompliance. It investigated work accidents when it received reports. The number of inspectors was generally sufficient to deter violations. Inspectors were able to make unannounced inspections and initiate sanctions. Penalties for violations of OSH laws were commensurate with those for crimes like negligence.

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 Public Service Commission 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.