

# **SAMOA 2021 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* (family chiefs) may be members. After a months-long political impasse following April 9 parliamentary elections, Fiamē Naomi Mata'afa became the country's first female prime minister. The elections were free and fair on the day, but post-election disputes and the resulting impasse caused some observers to question the legitimacy of the electoral process.

The national police, under the Ministry of Police, Prisons, and Correction Services, maintain internal security. Civilian authorities maintained effective control over the security forces. There were no credible reports that members of the security forces committed abuses.

Significant human rights issues included credible reports of: the existence of criminal libel laws; lack of investigation of and accountability for sexual and gender-based violence, including domestic and intimate partner violence, child abuse, sexual abuse of children, incest, sexual violence, and other harmful practices; existence of laws criminalizing consensual same-sex sexual conduct between adults, although the law was not enforced; and existence of the worst forms of child labor.

The government took steps to prosecute officials who committed human rights abuses and corruption. There were no reports of impunity for human rights abuses. Impunity for corruption was rare.

## **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**

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**

There were no reports regarding prison or detention center conditions that raised human rights concerns.

**Physical Conditions:** Tanumalala Prison has adequate ventilation, lighting, and sanitation. Pretrial detainees were held separate from convicts. Women and men were held in separate sections of the prison. Juvenile prisoners were held apart from the adult population. Authorities provided food, water, and sanitation. There were no major concerns regarding physical conditions, disease, or inmate abuse.

Oloamanu Juvenile Center formerly housed juveniles but is now used as a prison farm for low-risk adult prisoners. Physical conditions at Oloamanu were generally better than at Tanumalala.

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 September an inmate escaped from Tanumalala, but he was apprehended within hours.

Authorities permitted prisoners and detainees to submit complaints to judicial authorities and the Office of the Ombudsman 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. During the year there were multiple visits by international organizations and foreign embassies based in the capital.

#### **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**

Courts issue 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. The nature and severity of a dispute determines which court receives an appeal.

In December 2020 parliament passed the Land and Titles Bill, blocking petitioners from appealing Land and Titles Court decisions to the Supreme Court and Court of Appeal. Instead, the law created new entities – a Land and Titles High Court and a Land and Titles Court of Appeal and Review – to hear appeals from the Land and Titles Court. The bill raised human rights concerns because it precludes the civil and criminal courts from ruling on customary legal decisions that may violate human rights.

### **Political Prisoners and Detainees**

There were no reports of political prisoners or detainees.

### **Civil Judicial Procedures and Remedies**

Individuals or organizations may generally seek civil remedies for human rights violations through the courts, although the Land and Titles Bill precludes civil and criminal courts from ruling on customary Land and Titles Court decisions.

### **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**

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

The law provides for freedom of expression, including for members of the press and other media, and the government generally respected this right. An independent media, an effective judiciary, and a functioning democratic political system combined to promote freedom of expression, including for members of the media. The law stipulates imprisonment for any journalist who, despite a court order and a court finding that disclosure is in the public interest, refuses to reveal a confidential source.

**Censorship or Content Restrictions:** The law authorizes the Samoa Tourism Authority (STA) to file suit against any person who publishes what it judges to be false information that it deems prejudicial to the country's reputation as a tourism destination. 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. In September a parliamentary staff member was temporarily suspended for making a disparaging post regarding the former clerk of the Legislative Assembly on the staffer's personal Facebook account.

### **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 and the Right to Leave the Country**

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, 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 does not specify a process for granting refugee status, and the government has not 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 April 9 general election free and fair on the day, but post-election disputes and a resulting political impasse caused some observers to question the legitimacy of the electoral process. The election initially resulted in a tie, with the Fa'atuatua i le Atua Samoa ua Tasi (Samoa United by Faith in God) (FAST) party and the Human Rights Protection Party (HRPP) each winning 25 seats and an independent candidate winning one seat. The independent parliamentarian-elect opted to join FAST, which declared victory, while court decisions and resignations forced by-elections in six constituencies originally won by the HRPP. The HRPP accepted defeat after the Court of Appeal affirmed FAST's victory on July 23. The election ended the HRPP's string of seven consecutive electoral victories, and Fiame Naomi Mata'afa became the country's first female prime minister. There were widespread reports of cash and noncash bribes paid during the campaign by both parties.

**Political Parties and Political Participation:** The constitution gives all citizens older than age 21 the right to vote; however, only the more than 17,000 persons with a matai title, the 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, all candidates must satisfy a three-year period of *monotaga* (services rendered through participation and physical contributions) in their respective villages to be eligible to run. The law seeks 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 monotaga requirement led to a number of court petitions and the disqualification of multiple candidates deemed not to have met the requirement. The cases exposed deficiencies in the requirement 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. After the April election, parliament passed a bill allowing candidates to use services rendered to their churches to satisfy the monotaga requirement.

**Participation of Women and Members of Minority Groups:** No laws limit participation of women or members of historically marginalized or minority groups in the political process, and they did participate. Four women won seats in parliament in the April election. No female candidates won parliamentary seats in by-elections for six constituencies held on November 26. A 52nd and 53rd seat were added to parliament to ensure that the constitutionally mandated 10 percent female representation was met. The seats went to the unsuccessful female candidates with the highest percentages of votes in their constituencies. Although both men and women may become matai, only 10 percent of matai were women. Following the April election, Fiame Naomi Mata'afa became the country's first female prime minister.

## **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 during the year, mostly involving candidates for parliament offering bribes in exchange for votes. Officials infrequently engaged in corrupt practices with impunity. 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 state-owned Samoa Airways failed to submit an annual report in 2020 or during the year.

## **Section 5. Governmental Posture Towards 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 and Societal Abuses**

### **Women**

**Rape and Domestic Violence:** The constitution prohibits the abuse of women. Rape of women and men is a crime. The criminalization of “unlawful sexual connection” with another person without that person’s consent applies to spouses and is punishable by 14 years in prison. The courts treated rape seriously, and the conviction rate was high. The penalty for rape is up to life imprisonment, but no court has ever imposed a life sentence.

When police received complaints from abused women, authorities generally investigated and charged the offender. Authorities charge domestic violence as common criminal assault, with a maximum penalty of 10 years’ 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 bylaws.

The government acknowledged that rape and domestic abuse were of significant concern. The report *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 that 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's Domestic Violence Unit works in collaboration with nongovernmental organizations (NGOs) and focuses on combating domestic abuse.

**Sexual Harassment:** No law specifically punishes sexual harassment, although the law permits an employee who experiences harassment to break an employment contract. There were no reliable statistics on the incidence of sexual harassment. 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.

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

The government worked with the NGO Samoa Victim Support Group to provide access to sexual and reproductive health services for survivors of sexual violence. Emergency contraception was available.

**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. The government generally enforced the law effectively.

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

The constitution states that all persons are equal before the law and entitled to equal protection under the law, and it bars discrimination on grounds of descent, sex, language, religion, political or other opinion, social origin, place of birth, or family status. There were no reports of racial or ethnic violence during the year.

Some villages, however, banned ownership by Chinese nationals of shops on village-owned land (approximately 80 percent of the land in the country).

## **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 2020 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.

The report *National Public Inquiry into Family Violence*, released in 2018, found that nine out of 10 children in the country experienced violence in their lifetime. Press reports indicated continued high levels of child abuse, especially of incest and indecent assault cases; the reports 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 18 for both men and women. Consent of at least one parent or guardian is necessary if either party is younger than 21. 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 maximum 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 persons ages 16 and 17.

Although comprehensive data on the sexual abuse of children was not available, it remained a widespread problem, and the number of incidents reported by local media during the year remained high. In the report *National Public Inquiry into Family Violence*, nearly 10 percent of female respondents reported they were raped as children by a family member. Social pressure and fear of reprisal meant this number likely represented a significant underreporting.

The Ministry of Justice and Courts Administration and the Ministry of Education, Sports, and Culture, 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 a small Jewish community, and there were no reports of anti-Semitic acts.

## **Trafficking in Persons**

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

## **Persons with Disabilities**

While no law prohibits discrimination against persons with physical, sensory, intellectual, and mental disabilities in the provision of public services, the law does

prohibit disability-based discrimination in employment. There were no reports of violence, harassment, intimidation, or abuses against persons with disabilities.

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 at least three schools in the capital created specifically to educate students with disabilities.

## **Acts of Violence, Criminalization, and Other Abuses Based on Sexual Orientation and Gender Identity**

“Sodomy” is illegal, with a maximum penalty of five years’ imprisonment. The law also prohibits renting, leasing, occupying, or managing any premises used for the commission of “indecent acts” between males, with a maximum penalty of seven years’ imprisonment. Authorities did not enforce these provisions regarding 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 accepted the traditional Polynesian *fa’afafine* (transgender, nonbinary) 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 and collectively bargain. The law provides for the right of private-sector workers to conduct legal strikes. 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 freedom of 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 under 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.

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. 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 the worst forms of child labor. The law does not

effectively prohibit the use or offering of children aged 17 to produce indecent materials. The law also does not specifically prohibit the use, procuring, or offering of a child for illicit activities, notably for the production and trafficking of drugs.

The law prohibits employing children younger than age 15 except in “safe and light work.” In 2019 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 work during school hours or at any other time if such work would interfere with the child’s schooling or educational development.

The law restricts vending by school-aged children (younger than age 16) if it interferes with their school attendance, participation in school activities, or educational development. This law is effectively enforced in the formal economy. Penalties were not commensurate with those for other analogous serious crimes, such as kidnapping. The law is only minimally enforced in the informal economy in areas such as child street vending. Some children sold goods and food on street corners. 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 farms 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. Discrimination based on age is not explicitly prohibited but may be barred by general language prohibiting discrimination on any arbitrary grounds.

The government effectively enforced the law, and penalties were commensurate with those under laws related to civil rights, such as election interference. The Labor Ministry received complaints 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**

**Wage and Hour Laws:** There were separate minimum wage scales for the private and public sectors. Both minimum wages were below the official estimate of the poverty income level for a household. The Ministry of Commerce, Industry, and Labor is responsible for enforcement of wage and hour laws. The number of inspectors was not sufficient to fully enforce compliance.

The law covers private-sector 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 some parts of the public sector, there is no paid overtime, but authorities give compensatory time off for overtime work. The government generally enforced wage laws, and penalties were commensurate with those for similar crimes, such as fraud.

**Occupational Safety and Health:** The law establishes certain rudimentary occupational safety and health (OSH) standards for workplaces that 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. 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. In 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.

The Labor Ministry enforced OSH laws. 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 investigated any potential labor law violations in response to complaints. The police and education ministries may assist if needed; the Public Service Commission handled all government labor matters.

**Informal Sector:** Approximately 75 percent of the working population worked in the subsistence economy and had no formal employment. The informal economy included small-scale trading, market vending, fishing, and agriculture. Informal workers were legally covered by labor laws and were eligible for social support including the country's pension system.