

Criminalisation of Homosexuality

Updated 25 October 2015

	Tonga	
<p>National Law:</p> <p>The <i>Laws of Tonga, Criminal Offences</i> Chapter 18, 1988 Edition¹</p> <ul style="list-style-type: none"> - S136: Sodomy and Bestiality² - S138: Indecent Assault on a Male³ - S139: Attempted Sodomy or Indecent Assault upon a Male⁴ 	<p>Maximum Penalties:</p> <ul style="list-style-type: none"> - 10 years' imprisonment, with or without whipping - 2 years' imprisonment⁵ - 10 years' imprisonment 	<p><u>Treaty Ratification</u></p> <p>CRC</p>
<p>The law is applicable only to men.</p>		
<p>Enforcement</p>	<ul style="list-style-type: none"> - 2014: The US Country Report for 2014 indicates that there have been no recent prosecutions under laws which criminalise consensual same-sex sexual conduct.⁶ - 2013: (UPR) Tonga stated in its most recent Universal Periodic Review: <i>"Tonga however wishes to record that it has not yet prosecuted any same sex adults for committing the act of sodomy, and so far, the criminal prosecutions for sodomy have only been restricted in the context of criminal offending, rather than against consensual same sex partners."</i>⁷ 	
<p>Statements by Public Figures</p>	<ul style="list-style-type: none"> - 5 August 2015: The United Nations launched a Pacific campaign against homophobia and transphobia.⁸ The initiative is a spin-off of the global United Nations Free & Equal Campaign led by the UN Human Rights Office. The launch event was attended by government representatives from Tonga. - May 2015: The Pacific Sexual Diversity Network's Isikeli Vulavou says a conference in Tonga has brought together 70 regional representatives from the Lesbian-Gay-Transgender-Bisexual community for the first time. Mr Vulavou says people are becoming more accepting.⁹ <p><i>"In Polynesia, they have been accepting of transgender like the fa'afafine, akava'ine and the Tongan leitis for years and for like other regions like Meleanesia there is change that is observed where we are seeing increased community acceptance to persons of diverse sexual orientation and gender identity."</i></p> <p>Mr Vulavou says the opening of the conference by the Deputy Prime Minister of Tonga, Hon Siaso Sovaleni, and the attendance of a member of the royal family</p>	

	shows the positive reception the group received from the local authorities.
Persecution and Discrimination	<ul style="list-style-type: none"> - May 2015: Outside a conference on Sexual Diversity and Orientation in the Pacific held in Tonga, a group of protesters held up a banner which read: “Go back to your country with your immorality, Tonga do not want you evil people.”¹⁰ - 2014: The 2014 United States Country report indicates that no instances of persecution or discrimination on the basis of sexual orientation could be found, although, the report adds that this may be attributable to social stigma leading to underreporting.¹¹
Legislative News	<ul style="list-style-type: none"> - May 2015: A historic conference on Sexual Diversity and Orientation in the Pacific held in Tonga, opened by the Deputy Prime Minister of Tonga and attended by a member of the royal family, was aimed at discussing issues and human rights legislation.¹² - April 2015: Tonga’s Chief Executive of Internal Affairs Lopeti Senituli said the government planned to amend the country’s Deaths, Births and Marriages Registration Act to explicitly prohibit same sex marriage. This move came in response to concerns raised by some community and church leaders that Tonga’s planned ratification of CEDAW may oblige Tonga to legalise same-sex marriage.¹³ - 2013: (UPR) Rejected recommendations to decriminalise sexual activity between consenting adults during two cycles. The Tongan delegation stated during the 2013 review that: “<i>The decriminalisation of consensual sex between same sex adults is an issue that Tonga still wishes to consider further, through robust and comprehensive dialogue with a vast group of stakeholders.</i>”¹⁴

¹ The law is : www.paclii.org/to/legis/consol_act/co136/

² *Criminal Offences Act 1988, s.136: “Whoever shall be convicted of the crime of sodomy with another person or bestiality with any animal shall be liable at the discretion of the Court to be imprisoned for any period not exceeding ten years and such animal shall be killed by a public officer.”*

³ *Criminal Offences Act 1988, s.138: “It is an offence for a person to make an indecent assault on a man.”*

⁴ *Criminal Offences Act 1988, s.139: “Whoever shall attempt to commit the said abominable crime of sodomy or shall be guilty of an assault with intent to commit the same or of any indecent assault upon any male person shall be liable at the direction of the Court to imprisonment for any term not exceeding 10 years.”*

⁵ For the term imprisonment for the crime of indecent assault see section 124, *Laws of Tonga, Criminal Offences* [Cap 18] 1988 Edition

⁶ Bureau of Democracy, Human Rights and Labor, *Country Reports on Human Rights Practices for 2014: Tonga* (US Department of State 2014)

<<http://www.state.gov/j/drl/rls/hrrpt/humanrightsreport/index.htm?year=2014&dclid=236484>>

accessed on 5 August 2015

⁷ UNHRC, *Report of the Working Group on the Universal Periodic Review* (3 June 2013) UN Doc A/HRC/23/4/Add.1, para. 9

⁸ United Nations Office of the High Commissioner for Human Rights, *United Nations launches Pacific campaign against homophobia and transphobia* (6 August 2015)

<<http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=16298&LangID=E>>
accessed on 25 September 2015

⁹ Radio New Zealand, *Conference head says more acceptance of LGTB in Pacific* (15 May 2015)

<<http://www.radionz.co.nz/international/pacific-news/273746/conference-head-says-more-acceptance-of-lgtb-in-pacific>> accessed on 25 September 2015

¹⁰ Kalino Latu, *Uproar after gay activists told to leave Tonga because they are immoral and evil* (New Zealand Kaniva Pacific 13 May 2015) <<http://www.nzkanivapacific.co.nz/2015/05/uproar-after-gay-activists-told-to-leave-tonga-because-they-are-immoral-and-evil/#.VclxD IViko>> accessed on 25 September 2015

¹¹ Bureau of Democracy, Human Rights and Labor, *Country Reports on Human Rights Practices for 2013: Tonga* (US Department of State 2014)

¹² Ibid n 3.

¹³ Radio New Zealand, *Tonga to ban same sex marriage for CEDAW* (21 April 2015)

<<http://www.radionz.co.nz/international/pacific-news/271672/tonga-to-ban-same-sex-marriage-for-cedaw>> accessed on 25 September 2015

¹⁴ UNHRC, *Report of the Working Group on the Universal Periodic Review* (3 June 2013) UN Doc A/HRC/23/4/Add.1, para. 9