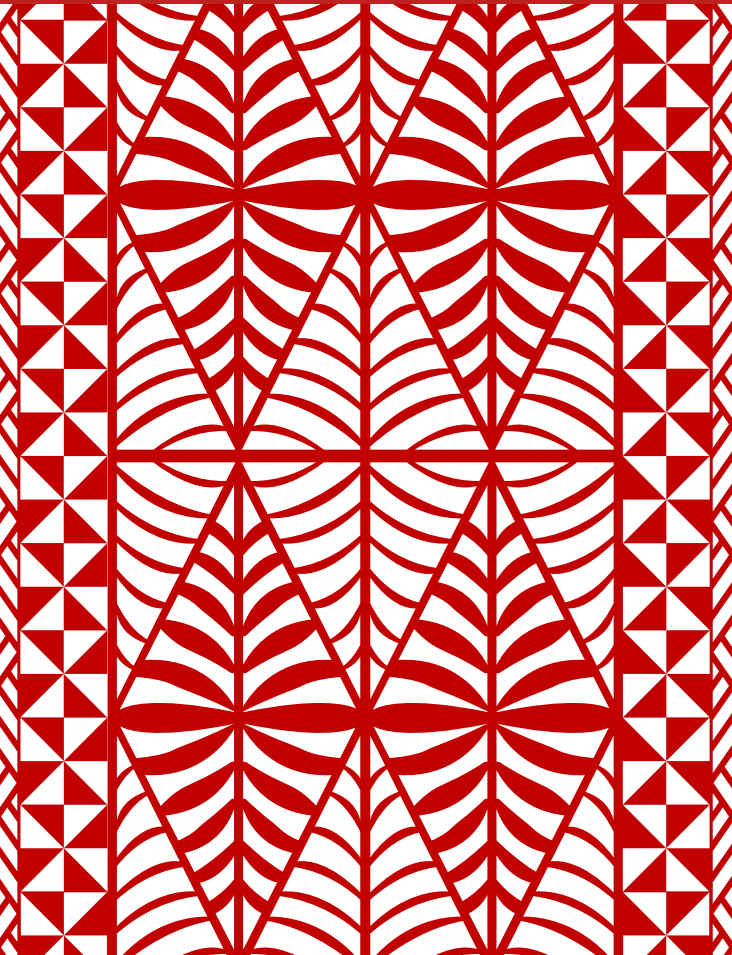



RELIGIOUS FREEDOM

A Guide to Your Rights

TONGA





“Everyone has the right to freedom of thought, conscience and religion; this right includes freedom to change his religion or belief, and freedom, either alone or in community with others and in public or private, to manifest his religion or belief in teaching, practice, worship and observance.”

—Universal Declaration of Human Rights, Article 18



FREEDOM OF RELIGION AND WORSHIP IN TONGA

1. What is the right to freedom of religion and worship?

The right to freedom of religion is the right to have, adopt, preserve or change your own religion. Closely tied to this right is the right to worship. The right to worship includes the right to believe, profess and practice, individually or collectively, the acts of worship or rituals of your preference. Likewise, people are free to abandon their religion, to not profess religious beliefs, and to refrain from practicing religious acts and rites.

The right to freedom of religion also protects people from being subjected to discrimination, coercion or hostility because of their religious beliefs.


2. What is the right to freedom of belief or conscience?

This is a person's fundamental right to follow his or her personal reasoning and convictions and not to be subject to actions that are against his or her deeply held judgements of right and wrong.

3. What are the laws that protect religious freedom?

The Tongan laws that defend religious freedom include the following:

- Clause 5 of the Constitution of Tonga of 1875 provides:
 - All men are free to practice their religion and to worship God as they may deem fit in accordance with the dictates of their own consciences and to assemble for religious service in such places as they may appoint. But it shall not be lawful to use this freedom to commit evil and licentious acts or under the name of worship to do what is contrary to the law and peace of the land.

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- Clause 6 of the Constitution says the Sabbath Day (Sunday) must be observed and kept holy and that no person shall practice his trade or profession or conduct any commercial undertaking on the Sabbath Day except according to law (and that any agreement made or witnessed on that day shall be of no legal effect).
 - Clause 7 of the Constitution protects Freedom of Expression (including religious expression) and says that all people are free to speak, write and print their opinions, and that no law can ever be enacted that restricts this liberty.


4. What is the official religion of Tonga?

There is no official religion, and Parliament does not have power to establish or authorise an official religion. Rather, the Constitution provides the framework for freedom of religion and worship. However, culturally there is a very strong and devoted adherence to the Christian faith throughout Tonga.

5. What can I do when my right to freedom of religion and worship is violated?

Tonga is governed by laws and all persons have a duty to uphold the law. Therefore, when your religious rights are violated, do not take the law into your own hands. You have the following lawful means for redress:

- a. The Supreme Court. The Supreme Court is the protector of the rights of all persons in Tonga, including religious freedom rights. So, a person may apply at the Supreme Court for redress if that right is violated. The Supreme Court can make a binding ruling for the protection of freedom of religion.
- b. Magistrate's Court. An alternative to the Supreme Court is the Magistrate's Court.



This Court has jurisdiction over non-criminal issues where less than \$10,000 is in dispute. The Court has the power to render judgements to enforce Tonga's laws and so to maintain peaceful co-existence and tolerance between people with different beliefs in order to maintain stability and cohesion in the community. Because Magistrate's Courts are found in every island group in Tonga, this type of court may be located closer to you than the Supreme Court. Magistrate Courts are also typically less expensive and easier to access.

- c. Another avenue that may be available, particularly where you believe that you may have been subject to discrimination or bad treatment by a Government Ministry, Department or officer, whether because of your religious beliefs or for any other reason, is to make a complaint regarding that treatment to the Office of the Ombudsman.

RELIGION IN THE PUBLIC SQUARE

6. Can I express my religious views in public?

Yes. The right to religious freedom established in the Constitution states that all men are free to practice their religion and to worship God as they wish, and to assemble for religious service in such places as they may wish. But you cannot use this right of freedom of worship as a reason or excuse for breaching or violating any of the laws of Tonga.

7. Can I share or preach my beliefs to others?

Yes. The right of freedom of worship incorporates a right to share religious beliefs, ideas, thoughts, and opinions with others. Likewise, people can come together to establish a religion, to adhere to an existing religion, or change their religious affiliation.



8. Can I be part of a religious entity or organization?

Yes. Under the Constitution, which is to be read broadly and expansively, people have the right to assemble for religious services as they see fit. This right which can be taken to extend to the right to establish places of worship or gathering for religious purposes, to freely exercise their own ministry, to establish their own internal hierarchy, and to have and direct their own institutes of formation and theological studies.

9. What are the government authorities that regulate religious entities?

Tonga does not have one government agency overseeing all religious entities and activities. Nonetheless, religious organisations are regulated by the Government of Tonga for the same reasons people are regulated—to maintain civility, proper conduct, and the rule of law. The Government regulates religious entities in the following ways:

As organisations formed for religious and charitable purposes, churches in Tonga will generally be registered as charitable trusts under the Tonga Charitable Trusts Act. That Act enables the government to regulate incorporated religious entities.

Because of this legal structure, religious entities may enjoy these benefits:

- a. The formal recognition of the Tongan Government.
- b. Tax exemption granted by the Tonga Ministry of Revenue on all ecclesiastical, charitable, and/or educational non-profit activities.
- c. Ability to acquire movable and immovable property.
- d. Enjoyment of perpetual succession with the ability to sue and be sued in their own name.



RELIGIOUS FREEDOM IN THE WORKPLACE

10. What influence does freedom of religion have in the relationship between an employer and an employee?

Tonga has no legal statutes that govern the employment relationship between an employer and employee. The law regarding the employment relationship is based in case law established by the Tonga Courts, guided by the case law of the Courts of the United Kingdom. United Kingdom case law is applicable in Tonga to the extent it has not been surpassed by Tongan statutes (and again there is no Tongan statute governing employment). While the Tongan Constitution guarantees the general freedom of all people in Tonga, and freedom of worship and freedom of expression, there is no Tongan law specifically addressing discrimination. While the question has never been addressed by the Tongan courts it is generally accepted that an employer may place religious requirements, such as membership of the church that is their employer, on its employees.

11. What is the relationship between religious freedom and working hours?

Tonga has no statutes governing employment law. The Tonga Public Holidays Act does however establish a schedule of public holidays that are to be observed by all employers, including the Christian holy days of Good Friday, Easter Monday and Christmas day. In addition, the Tongan Constitution states that the Sabbath Day (Sunday) must be observed, and that no one should practice their trade or profession or conduct any business on the Sabbath Day, unless otherwise permitted by law. Employees should discuss situations which could potentially impact religious observance and/or prayer with their employers.



12. Can I wear religious clothing to work or refuse to wear part of a uniform because of my religious beliefs?

While these actions are not specifically protected by law, the Constitution does provide for freedom of religion. Employees should notify their employers in a timely manner of any needs or special circumstances that arise due to religious beliefs or practices. This allows the employer to be aware of such circumstances and accommodate the religious freedom of employees more adequately.

RELIGIOUS FREEDOM IN SCHOOLS

13. Can there be religion classes in public schools?

Yes. Religious teaching is given in Tongan schools, although as a matter of practice is generally based entirely upon Christian teachings and principles. The Education Act nevertheless specifically provides that the Minister of Education shall make suitable arrangements for the ministers of religion of any denomination or persons accredited by any denominations to visit government schools for the purpose of giving religious instruction to students of their respective denominations.

14. Is it mandatory for students to attend religious education or religious observances in their schools?

There is nothing in the Tonga Education Act which provides for mandatory religious education or religious observance in Tongan schools, however given the country's general and strong (but not legally mandated) devotion and adherence to the Christian faith it would be considered unusual for a student not to participate in Christian religious instruction where it is offered. If a parent has a concern about their child's participation in religious instruction, then this is something that would be best addressed in consultation with the student's teacher or the school principal.



15. Can students refrain from attending school or scheduled school activities because of their religious beliefs?

The Tonga Education Act provides that every child in Tonga is required to complete 12 years of education, commencing from the age of 4, and that it is the duty of the parent or guardian of every child of compulsory school age to ensure that the child receives a suitable and efficient education by regular attendance at a school.

So, any absence from school should be justified by a written note from a parent or guardian, and consecutive absences should be limited so that students will not fall behind in their education. Schools should be respectful of students who, because of their religious beliefs, do not participate in activities for religious reasons. Parents or the interested parties should communicate with school leaders from the outset to discuss the religious reasons for not participating in activities or policies.

16. Can students modify school uniforms because of their religious beliefs?

There is no law in Tonga that addresses this and each school is entitled to establish its own policies regarding uniforms, and aspects of personal appearance (such as hairstyling). Parents or the interested parties should communicate with school leaders from the outset to discuss any religious reasons or concerns regarding a school's uniform and personal appearance policies.

MILITARY AND PUBLIC SERVICE

17. Is there mandatory military or public service, and if so, are there any religious exemptions?

There are no mandatory military or public service requirements in Tonga.



RELIGION AND JUSTICE

18. Can I refrain from taking an oath in legal proceedings because of my religious beliefs?

Yes. While under the Tonga Evidence Act the prescribed manner in which an oath is taken in legal proceedings is by way of a sworn oath (upon the Christian Bible), the Act does allow for a participant in legal proceedings to instead swear an affirmation that the evidence they are giving, (or the document of which they are attesting), is true if the taking of an oath is contrary to their religious belief, (or if they have no religious belief).

19. Can judges make decisions based on their religious beliefs?

No. The final authority vested in the judiciary is exercised on behalf of the His Majesty the King of Tonga, and all judges must undertake the judicial oath (or affirmation) to perform truly and with impartiality their duties as a judge in accordance with the Constitution and the Laws of the Kingdom.

20. Is there any protection for statements made in confidence to religious leaders?

No, the concept of protection of statements under Tongan law does not extend to statements made to religious leaders.



RELIGIOUS FREEDOM IN INTERNATIONAL LAW

In addition to local protections for religious freedom in individual countries, there are also different international instruments or legal documents that protect this right. In 1948, the right to freedom of religion and conscience was introduced by the Universal Declaration of Human Rights. Since then, there have been different covenants and conventions that establish and develop this right at the international level.

What protections do I receive under international law?

International instruments establish that all people are equal before the law, regardless of their religion. These laws also state that no one may be discriminated against on the basis of religion. This is an offense against human dignity and is condemned as a violation of human rights and fundamental freedoms.


What freedoms do these international instruments include?

- **Freedom of thought, conscience, and religion.**

This freedom includes freedom of thought on all matters, freedom to hold beliefs, freedom of commitment to religion or belief, and freedom of personal conviction. It does not allow any limitations on the freedom to have or adopt a religion or belief of one's choice. No one can be compelled to reveal his or her thoughts or adherence to a religion or belief.

- **Freedom to change religion or beliefs.**

All people have the right to leave their own religion or belief and to adopt another, or to remain without any belief at all. The use of physical force, penal sanctions, policies, or practices to force a person to adopt, change, or maintain a certain religion or belief is prohibited.


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- **The freedom to manifest and profess your own religion or beliefs, individually and collectively, both publicly and privately.**

Everyone enjoys the right to peacefully manifest and share one's religion or belief with others without being subject to the approval of the state or another religious community. This right is not limited to members of registered religious communities. Moreover, registration should not be compulsory for religious communities or organizations in order to enjoy their rights.

- **The freedom to manifest your religion through teaching, practice, worship, and observance.**

The freedom to manifest religion or belief in worship, observance, practice, and teaching includes a broad range of acts:

- Worship and observance extends to ritual and ceremonial acts giving direct expression to belief, as well as various practices integral to such acts, including the building of places of worship, the use of ritual formulae and objects, the display of symbols, and the observance of holidays and days of rest.
- Practice and teaching of religion or belief include acts integral to the conduct by religious groups of their basic affairs, such as the freedom to choose their religious leaders, priests, and teachers; the freedom to establish seminaries or religious schools; and the freedom to prepare and distribute religious texts or publications.

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- **The freedom of parents and guardians to have their children or pupils receive religious or moral education that is in accordance with their own convictions.**

Children enjoy the right to have access to religious education in accordance with the wishes, religious beliefs, or convictions of their parents or guardians. Likewise, children should not be forced to receive religious instruction that is contrary to the wishes of their parents or guardians. In accordance with the principle of the best interests of the child, the State should encourage an atmosphere of religious tolerance in schools and promote respect for pluralism and religious diversity.

Are there any limitations to these freedoms?

Yes. There are some limitations that are given by law, and their purpose is to protect public safety, order, health, morals, and the fundamental rights and freedoms of others. However, restrictions may not be imposed for discriminatory purposes or applied in a discriminatory manner.



FINDING COMMON GROUND

As people, we have the freedom to choose, share, and live what we believe. We generally hold our religious freedoms and beliefs dear as guiding principles in our lives. Just as we value our own religion and beliefs, we should highly value all people's rights to religious freedom and belief. Knowing the importance of these freedoms, how can we share the principles of freedom of religion in our communities? Is there a way to find common ground when we interact with people holding different beliefs?

The following strategies may allow you to find common ground in your community:

BECOME INFORMED

Before you can protect the religious beliefs of yourself or others, it is important to be informed and understand the rights and basic principles of freedom of religion. This brochure contains some relevant information with regards to your rights and the basics of freedom of religion. Seek to stay aware of changes in religious freedoms by watching developments that affect these freedoms in the news.

LISTEN TO ALL SIDES

Listen and show concern for other people's religions and sincere beliefs. Even if you disagree with the beliefs, or convictions of another, seek to understand and to be respectful of his or her perspective. People's words, beliefs and actions are influenced by many factors. You should be sensitive to the feelings of others as you explain and pursue your positions, and you should ask that others not be offended by your sincere religious beliefs.



PRACTICE CIVILITY

In order to live as a community with differences of opinion and beliefs, it is critical to know how to debate and not just what to debate. Your communications on controversial topics should not be contentious. All people should treat one another with civility and respect while striving to be accurate and fair. When your positions do not prevail, you should accept unfavorable results graciously and civilly. Remember to reject persecution of any kind, including persecution based on race, ethnicity, religious belief or nonbelief, and differences in sexual orientation.

PROMOTE TOLERANCE

People must be able to peaceably live together while having differences. To live peaceably does not mean you need to abandon your positions; rather, it means you should strive to live peacefully with others who do not share your values or accept the teachings upon which they are based. Strive to teach values and standards of behavior to those around you without having them distance themselves or show disrespect to any who are different.

BUILD TRUSTED RELATIONSHIPS

Build trusted relationships in your community among people of diverse opinions. You will be better able to protect the rights of others in a way that benefits everyone as you get to know more people and as those people come to understand each other's beliefs. Concentrate on what you have in common with your neighbors and fellow citizens. Then, as you work together, speak out for religion and the importance of religious freedom.



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