

TUVALU 2012 HUMAN RIGHTS REPORT

EXECUTIVE SUMMARY

Tuvalu is a constitutional parliamentary democracy. Following generally free and fair parliamentary elections in 2010, a loose coalition of eight of the 15 members of parliament formed a new government and selected Maatia Toafa as prime minister. However, in 2010 parliament ousted Toafa in a vote of no confidence and selected Willy Telavi as prime minister. Security forces reported to civilian authorities.

There were human rights problems in a few areas. In particular, there were concerns that traditional customs and social patterns led to and perpetuated religious and social discrimination, including discrimination against women. Domestic violence also was a problem.

Impunity was not an issue, as there were no reports that government officials committed human rights abuses.

Section 1. Respect for the Integrity of the Person, Including Freedom from:

a. Arbitrary or Unlawful Deprivation of Life

There were no reports that the government or its agents committed arbitrary or unlawful killings.

b. Disappearance

There were no reports of politically motivated disappearances.

c. Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment

The constitution prohibits such practices, and there were no reports that government officials employed them.

Local hereditary elders exercise traditional discretionary punishment and disciplinary authority. This includes the right to inflict corporal punishment for infringement of customary rules, which can be at odds with national law. However, during the year there were no reports of such corporal punishment.

Prison and Detention Center Conditions

Prison and detention center conditions generally met international standards.

Physical Conditions: As of December the prison system held 12 convicted prisoners (11 men and one woman). There were no juvenile offenders (defined as those under age 18) or pretrial detainees. Prisoners had access to potable water.

Administration: Recordkeeping on prisoners was adequate. Prisoners had access to visitors and were permitted religious observance. Prisoners could submit complaints without censorship through the Office of the People's Lawyer. During 2012 the government did not investigate or monitor prison conditions and did not receive any complaints or allegations of inhumane conditions.

The country does not have a formal ombudsman who can act on behalf of prisoners and detainees, but the people's lawyer was available to respond to prisoner complaints.

Monitoring: The government permitted visits by international human rights observers, but there were no visits during the year.

Improvements: During the year workmen completed renovations to the women's prison.

d. Arbitrary Arrest or Detention

The law prohibits arbitrary arrest and detention, and the government generally observed these prohibitions.

Role of the Police and Security Apparatus

The national police, under the Office of the Prime Minister, maintain internal security. The country has no military force. Civilian authorities maintained effective control over the national police service, and the government has effective mechanisms to investigate and punish police abuse and corruption. There were no reports of impunity involving the security forces during the year.

Arrest Procedures and Treatment While in Detention

The law permits arrests without warrants if a police officer witnesses the commission of an unlawful act or has “reasonable suspicion” that an offense is about to be committed. Police estimated the majority of arrests were of this type. Police may hold a person arrested without a warrant for no more than 24 hours without a hearing before a magistrate. When a court issues an arrest warrant, the maximum permissible detention time before a hearing must be held is stated on the warrant and normally is one to two weeks.

There was a functioning system of bail. Arrested persons generally were informed promptly of the charges against them, although bureaucratic delays sometimes occurred because persons charged with serious offenses must wait for its semiannual session to be tried in the High Court. A “people’s lawyer” (public defender) was available free of charge for arrested persons and other legal advice. Persons on the outer islands did not have ready access to legal services because the people’s lawyer was based on the main island of Funafuti and traveled infrequently to the outer islands. The country had no attorneys in private practice.

e. Denial of Fair Public Trial

The law provides for an independent judiciary, and the government generally respected judicial independence in practice.

Trial Procedures

The law provides for the right to a fair public trial, and an independent judiciary generally enforced this right. The law provides for a presumption of innocence. Judges conduct trials and render verdicts; there are no juries. Defendants have the right to be informed promptly and in detail of the charges, including free interpretation if necessary; consult with an attorney in a timely manner; and have access to an independent public defender. They also have the right to confront witnesses, present witnesses and evidence, access government-held evidence, and appeal convictions. Defendants may not be compelled to testify or confess guilt.

Political Prisoners and Detainees

There were no reports of political prisoners or detainees.

Civil Judicial Procedures and Remedies

There is an independent and impartial judiciary in civil matters. Individuals and organizations may seek civil remedies for human rights violations.

f. Arbitrary Interference with Privacy, Family, Home, or Correspondence

The law prohibits such actions, and the government generally respected these prohibitions in practice.

Section 2. Respect for Civil Liberties, Including:

a. Freedom of Speech and Press

The law provides for freedom of speech and press, and the government generally respected these rights in practice. An effective judiciary and a functioning democratic political system combined to ensure freedom of speech and of the press.

Freedom of Press: Although there were no government restrictions, there were no locally based private, independent media. The government's Media Department controlled the country's sole radio station.

Internet Freedom

There were no government restrictions on access to the Internet or credible reports that the government monitored e-mail or Internet chat rooms without judicial oversight. Individuals and groups could engage in the expression of views via the Internet, including by e-mail. Internet access was available mainly on Funafuti, although connections were slow, costly, and unreliable. According to the International Telecommunication Union, approximately 30 percent of the population used the Internet in 2011.

Academic Freedom and Cultural Events

There were no government restrictions on academic freedom or cultural events.

b. Freedom of Peaceful Assembly and Association

The law provides for freedom of assembly and association, and the government generally respected these rights in practice. In contrast to 2011, there were no restrictions on public gatherings in the capital of Funafuti.

c. Freedom of Religion

See the Department of State's *International Religious Freedom Report* at www.state.gov/j/drl/irf/rpt/.

d. Freedom of Movement, Internally Displaced Persons, Protection of Refugees, and Stateless Persons

The law provides for freedom of internal movement, foreign travel, emigration, and repatriation, and the government generally respected these rights in practice.

Protection of Refugees

Access to Asylum: The law provides for the granting of asylum or refugee status, but the government has not established a system for providing protection to refugees. During the year there were no applications for asylum or refugee status.

Section 3. Respect for Political Rights: The Right of Citizens to Change Their Government

The law provides citizens the right to change their government peacefully, and citizens exercised this right in practice through periodic, free, and fair elections based on universal suffrage.

Elections and Political Participation

Recent Elections: The 2010 general elections were generally free and fair. An eight-member majority of the newly elected parliament selected Maatia Toafa as prime minister. In late 2010 parliament ousted Toafa in a no-confidence vote and selected Willy Telavi as prime minister.

Political Parties: There were no formal political parties. Instead, parliament tended to divide between an ad hoc faction with at least the necessary eight votes to form a government and an informal opposition faction.

Participation of Women and Minorities: Participation by women in government and politics was limited, largely due to traditional perceptions of women's role in society. There were no women in the 15-member parliament. One woman served

as a cabinet minister. There were no members of minorities in parliament or the cabinet.

Section 4. Corruption and Lack of Transparency in Government

The law provides criminal penalties for some forms of official corruption, such as theft; however, laws against corruption are weak. Concerns remained that public funds sometimes were mismanaged and that government officials sometimes benefited unfairly from their positions, particularly with regard to overseas travel and related payments and benefits.

The law provides for annual public ministerial reports, but publication was spotty and often nonexistent. There was no requirement for income and asset disclosure by appointed or elected officials.

Since 2009, together with Nauru and Kiribati, the country has participated in a sub-regional audit support program, an initiative of the Pacific Association of Supreme Audit Institutions, with the goal of enabling public accounts to be audited to uniformly high standards in a timely manner.

There is no law providing for public access to government information. In practice the government was somewhat cooperative in responding to individual requests for such information and provided limited copies of its annual budget documents to the public on request.

Section 5. Governmental Attitude Regarding International and Nongovernmental Investigation of Alleged Violations of Human Rights

There were no local nongovernmental organizations (NGOs) focused entirely on human rights, although there were no known barriers to their establishment. Some human rights advocates, such as the Tuvalu National Council of Women, operated under the auspices of the Tuvalu Association of NGOs, which was composed primarily of religious organizations. The few other local organizations involved in human rights issues generally operated without government restriction, investigating and publishing their findings on human rights cases. However, opportunities to publicize such information locally were severely limited due to the lack of local print and electronic media. Government officials were somewhat cooperative and responsive to local organizations' views.

Government Human Rights Bodies: The people's lawyer monitored sentencing, equality before the law, and human rights issues in general. This institution, which at times was critical of the government, nonetheless had government support and entertained requests for advice from the government.

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

The law prohibits discrimination on the basis of race, color, and place of origin, and the government generally enforced these prohibitions. In 2005 the High Court stated that it was a deliberate decision in the constitution originally to omit gender as a basis of discrimination; thus, there is no constitutional protection against sex discrimination.

Women

Rape and Domestic Violence: Rape is a crime punishable by a minimum sentence of five years' imprisonment, but spousal rape is not included in the legal definition of this offense. One case of attempted rape was prosecuted during the year. The courts prosecuted five sexual assault cases, one case of defilement, and three cases of indecent assault.

The law does not specifically address domestic violence, which is prosecuted under the assault provisions of the penal code. The maximum penalty for common assault is six months' imprisonment, and for assault with actual bodily harm, five years' imprisonment. According to the police, as of September, there were 93 domestic violence cases on record.

The police have a Domestic Violence Unit. The government also participated in a regional program providing training for police in handling domestic violence cases. Many cases of rape and domestic violence went unreported due to lack of awareness of women's rights and traditional and cultural pressures on victims. Human rights observers criticized police for seeking to address violence against women using traditional and customary methods of reconciliation rather than criminal prosecution. The Women's Crisis Center, operated by the Tuvalu National Council of Women, provided counseling services, but there were no shelters or hotlines for abused women.

Sexual Harassment: The law does not specifically prohibit sexual harassment but prohibits indecent behavior, which includes lewd touching. Sexual harassment was not widely reported, nor known cases reported during the year.

Reproductive Rights: Couples and individuals have the right to decide freely the number, spacing, and timing of their children, and couples have the means and information to do so free from discrimination, coercion, and violence. The nongovernmental Tuvalu Family Health Association provided information and education about, and access to, contraception. Government hospitals offered family planning services and provided free prenatal, obstetric, and postnatal care. Trained health personnel attended many births.

Discrimination: There remain areas in which the law contributes to an unequal status for women, such as land inheritance and child custody rights. In practice women held a subordinate societal position, constrained both by law in some instances and traditional customary practices. Nonetheless, women increasingly held positions in the health and education sectors, headed a number of NGOs, and were more active politically. In the wage economy, men held most higher-paying positions, while women held the majority of lower-paying clerical and retail positions. Additionally, few women could access credit to start businesses.

There is a Department of Women within the Office of the Prime Minister.

Children

Birth Registration: Citizenship is derived through one's parents. The law requires registration of births within 10 days, a practice generally observed.

Education: The law sets compulsory education from six to 15 years of age and stipulates free tuition from six to 13 years.

Child Abuse: The government did not compile child abuse statistics, and there were no reported cases of child abuse or child prostitution during the year. However, anecdotal evidence indicated that child abuse occurred. Corporal punishment, in the form of strokes of a cane or paddle, was common in schools.

Child Marriage: The legal minimum age of marriage for both girls and boys is 16 years. From 2002 to 2012, the average annual number of marriages of persons under age 18 was two.

Sexual Exploitation of Children: The age of consent for sexual relations is 15. Sexual relations with a girl below age 13 are punishable by up to life imprisonment. Sexual relations with a girl older than age 12 but younger than age

15 are punishable by up to five years' imprisonment. The victim's consent is irrelevant under both these provisions; however, in the latter case, reasonable belief that the victim was 15 or older is a permissible defense. No provision of law pertains specifically to child pornography, although the penal code prohibits obscene publications in general.

International Child Abductions: The country is not a party to the 1980 Hague Convention on the Civil Aspects of International Child Abduction.

Anti-Semitism

There was no known Jewish community, and there were no reports of anti-Semitic acts.

Trafficking in Persons

There were no confirmed reports of human trafficking during the year.

Persons with Disabilities

The law does not prohibit discrimination on the basis of physical, sensory, intellectual, or mental disability, including in employment, education, air travel and other transport, or the provision of other state services. In practice supplementary state services to address the special needs of persons with disabilities were very limited. There are no mandated building accessibility provisions for persons with disabilities. The one multistory government building had nonoperational elevators, and there were no elevators in other multistory buildings. Persons with disabilities had limited access to information and communications. The Fusi Alofa Association (Tuvalu National Disabled Persons Organization) and the Tuvalu Red Cross undertook regular home visits to persons with disabilities and conducted educational programs to raise community awareness of the rights of persons with disabilities and advocate for such persons. Children with disabilities reportedly had lower school attendance rates at all levels than other children. The Fusi Alofa Association ran basic education classes in Funafuti for children with disabilities who were not able to attend school.

The Community Affairs Department in the Ministry of Home Affairs and Rural Development is responsible for protecting the rights of persons with disabilities.

Societal Abuses, Discrimination, and Acts of Violence Based on Sexual Orientation and Gender Identity

Sexual conduct between males is illegal, with maximum penalties of seven to 15 years' imprisonment depending on the nature of the offense, but there were no reports of prosecutions of consenting adults under these provisions during the year. Societal discrimination against persons based on sexual orientation or gender identity was uncommon, and there were no reports of such discrimination during the year.

Other Societal Violence or Discrimination

Persons with HIV/AIDS faced some societal discrimination. Local agents of foreign companies that hired seafarers from Tuvalu to work abroad barred persons with HIV/AIDS from employment. The government and NGOs cooperated to inform the public about HIV/AIDS and counter discrimination. There were no reports of violence against persons based on HIV/AIDS status.

Section 7. Worker Rights

a. Freedom of Association and the Right to Collective Bargaining

The law, including related regulations and statutory instruments, protects the right of workers to form and join independent unions, choose their own labor representatives, and conduct legal strikes. The law also provides for conciliation, arbitration, and settlement procedures in cases of labor disputes. Public-sector employees such as civil servants, teachers, and nurses were members of professional associations that did not have union status. Most of the working-age population (approximately 75 percent) lacked permanent employment and worked in the informal and subsistence economy. The only registered trade union, the Tuvalu Overseas Seamen's Union, was independent of the government. There were no reports of antiunion discrimination.

Although there are provisions for collective bargaining and the right to strike, in practice the few individual private-sector employers set their own wage scales. Both the private and public sectors generally used nonconfrontational deliberations to resolve labor disputes.

b. Prohibition of Forced or Compulsory Labor

The law prohibits forced or compulsory labor, and there were no reports that such practices occurred.

c. Prohibition of Child Labor and Minimum Age for Employment

The law prohibits children under age 14 from working in the formal labor market. The law also prohibits children under age 15 from industrial employment or work on any ship and stipulates that children under age 18 are not allowed to enter into formal contracts, including work contracts. However, a separate provision of law allows children age 15 or older to enter into apprenticeships of up to five years, subject to approval by the commissioner of labor. There are no restrictions on the type of work that a child apprentice may perform, but he or she must be medically examined and determined to be physically and mentally fit for employment in the specified occupation. Apprentices may lawfully live away from their families; in such cases, under the law the contract must adequately provide for the supply of food, clothing, accommodation, and medical attention to the apprentice. However, the government did not have sufficient resources to formally monitor and enforce child labor law provisions, depending instead on communities to report offenses. Children rarely were employed outside the traditional economy of subsistence farming and fishing.

Also see the Department of Labor's *Findings on the Worst Forms of Child Labor* at www.dol.gov/ilab/programs/ocft/tda.htm.

d. Acceptable Conditions of Work

The law provides for the government to set a minimum wage, but in practice the Department of Labor in the Ministry of Foreign Affairs and Labor has not set a national minimum wage rate. The minimum annual salary in the public sector was approximately A\$3,000 to A\$4,000 (\$3,120 to \$4,160). No recent poverty-level income figure was available, but this minimum salary was barely sufficient to allow a worker and family in the wage economy to maintain a decent standard of living. In practice, private-sector wages were reportedly somewhat lower than the minimum public-sector wage rate. According to traditional custom, however, extended families help support their less well-off members.

The law sets the workday at eight hours, and the Ministry of Foreign Affairs and Labor may specify the days and hours of work for workers in various industries. Although there is provision in the law for premium pay for overtime work, no premium overtime rates have been established. The law provides for rudimentary

health and safety standards. It requires employers to provide adequate potable water, basic sanitary facilities, and medical care.

The Ministry of Foreign Affairs and Labor is responsible for the enforcement of wage, hour, health, and safety regulations, but the ministry did not have sufficient resources to formally and regularly conduct inspections of the laws' application during the year. The Department of Labor had only one staff member, who relied on tips from the community and conducted inspections when the office received complaints. There were no reported cases of workplace injuries or deaths during the year.