

TUVALU 2013 HUMAN RIGHTS REPORT

EXECUTIVE SUMMARY

Tuvalu is a constitutional parliamentary democracy. Parliamentary elections in 2010 were generally free and fair. In August, following a no-confidence vote to remove the incumbent, Willy Telavi, parliament selected opposition leader Enele Sopoaga as prime minister. Authorities maintained effective control over the security forces. Security forces did not commit human rights abuses.

There were human rights problems in a few areas. In particular, traditional customs and social patterns led to and perpetuated religious and social discrimination, including discrimination against women and minority religious groups. 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, but there were no reports of such corporal punishment during the year.

Prison and Detention Center Conditions

Prison and detention center conditions generally met international standards, and the government permitted visits by independent human rights observers, but there were no visits during the year.

Physical Conditions: As of September the prison system held eight convicted prisoners, all men. There were no juvenile offenders (defined as those under age 18) or pretrial detainees, and there were no deaths of inmates during the year. Prisoners had access to potable water.

Administration: Recordkeeping on prisoners was adequate. Although there were no official alternatives to incarceration for nonviolent offenders, victims could request restitution in place of incarceration for offenders. 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. Prisoners had access to visitors and permission for religious observance. Prisoners could submit complaints without censorship through the Office of the People’s Lawyer. The government did not investigate or monitor prison conditions and did not receive any complaints or allegations of inhuman conditions.

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.

Arrest Procedures and Treatment of Detainees

The law permits arrests without a warrant 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 warrant will state the maximum permissible detention time before a hearing must be held, which is normally one to two weeks. Authorities did not hold suspects incommunicado or under house arrest.

Authorities generally informed arrested persons promptly of the charges against them, although bureaucratic delays sometimes occurred because persons charged with serious offenses must wait for the semiannual session of the High Court to be tried. There was a functioning system of bail. 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.

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 the people’s lawyer and adequate time and resources to prepare a defense. 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.

After Fiji banned transit travel for him in 2008, the country’s chief justice, Gordon Ward, who is resident in New Zealand, did not attend hearings of the Supreme Court and usually issued his rulings by telephone or e-mail.

Political Prisoners and Detainees

There were no reports of political prisoners or detainees.

Civil Judicial Procedures and Remedies

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.

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. An effective judiciary and a functioning democratic political system combined to promote freedom of speech and of the press.

Press Freedoms: 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 appropriate legal authority. Internet access was available mainly on Funafuti, although connections were slow, costly, and unreliable. According to the International Telecommunication Union, approximately 35 percent of the population used the internet in 2012.

Academic Freedom and Cultural Events

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

b. Freedom of Peaceful Assembly and Association

Freedom of Assembly

The law provides for freedom of assembly, but also gives island chiefs the authority to restrict religious activities of organizations deemed to threaten the values and culture of the island community directly or deemed divisive, unsettling,

or offensive to the people. Under this provision, island officials restricted public worship for minority religious groups on five islands during the year. The government continued to protect the right to choose freely and practice religion but called for religious organizations to abide by the island chiefs' restrictions on public worship and public religious group meetings. Reports indicated that religious minorities met in private homes in small groups during the year after officials restricted their public worship but practiced openly by the end of the year in violation of the restrictions. No arrests or fines were reported.

Freedom of Association

The law provides for freedom of association, and the government generally respected this right.

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.

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. There were no applications for asylum or refugee status during the year.

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 through periodic, free, and fair elections based on universal suffrage.

Elections and Political Participation

Recent Elections: The 2010 general parliamentary elections were generally free and fair.

Political Parties: There were no formal political parties. Instead, the 15-member 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. In a 2011 by-election in one of the island constituencies, voters elected a woman to parliament. Until the August change in government, she also served as minister for home affairs and rural development.

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. In contrast to past years, there were no reports of government corruption. The public, however, criticized government ministers' and officials' frequent overseas travel.

The law provides for annual public ministerial reports, but publication was spotty and often nonexistent.

Since 2009, together with Nauru and Kiribati, the country participated in three rounds of a subregional audit support program, an initiative of the Pacific Association of Supreme Audit Institutions, with the goal of enabling audits of public accounts to meet uniformly high standards in a timely manner.

Corruption: The Auditor General's Office, responsible for providing government oversight, was underfunded and consequently lacked adequate staff and resources to operate effectively. When needed, the police play a role in investigating charges of corruption as well.

Whistleblower Protection: The law does not provide protection to public and private employees for making internal disclosures or lawful public disclosures of evidence of illegality, such as the solicitation of bribes or other corrupt acts, gross waste or fraud, gross mismanagement, abuse of power, or substantial and specific dangers to public health and safety.

Financial Disclosure: Although the law requires income and asset disclosure by appointed and elected officials, it also requires the appointment of an ombudsman to oversee implementation. The government has not appointed an ombudsman and, therefore, did not implement the financial disclosure provision.

Public Access to Information: There is no law providing for public access to government information. 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

No nongovernmental organizations (NGOs) focused entirely on human rights, although no known barriers existed to establishment of human rights groups. 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. Nonetheless, 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 has government support and can respond to requests for advice from the government.

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

The law prohibits discrimination based on 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 prohibited 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. The courts prosecuted two sexual assault cases, one case of defilement, and one case of indecent assault during the year.

The law recognizes domestic violence as a criminal offense. Prosecutions occur 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.

The police have a Domestic Violence Unit and a "no-drop" policy in cases of violence against women. The law recognizes the existence of domestic violence, and gives express powers for police involvement and intervention, including the power to enter private property. Police may also issue orders for a person who has committed an act of domestic violence to vacate property, whether or not that individual has rights in that property, if it is occupied by a person at risk of further violence. The government participated in a regional program providing training for police in handling domestic violence cases and held community consultations in the three outermost islands of the country to raise public awareness about a proposed family protection and domestic violence bill. 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 noted that awareness and education programs were concentrated in the capital of Funafuti to the exclusion of outer island communities. 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 were there 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 offer family planning services and provide 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. There are no laws preventing employment discrimination on the basis of gender or requiring equal pay for equal work. 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 Ministry of Home Affairs and Rural Development.

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 during the year. Anecdotal evidence, however, indicated that child abuse occurred. The law confirms the right of parents, teachers, and others having lawful control of a child to use corporal punishment, and reports indicted this occurred in schools and homes.

Forced and Early Marriage: The legal minimum age of marriage for both girls and boys is 16 years. From 2002 to 2012, approximately 10 percent of children married by the age of 18.

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 specifically prohibit discrimination against persons with physical, sensory, intellectual, or mental disabilities, including in employment, education, air travel and other transport, or the provision of other state services. 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. Some students with disabilities attended government-run public primary schools both in Funafuti and in several outer islands. Most students with disabilities in Funafuti attended basic education classes run by the Fusi Alofa Association. Parents make the decision concerning which school a child with disabilities attends, after consultation with a Fusi Alofa Association advisor.

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 men 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. There were no reports of violence against persons based on sexual orientation or gender identity, but social stigma or intimidation may have prevented reporting of incidents of discrimination or violence.

Other Societal Violence or Discrimination

Persons with HIV/AIDS faced some societal and employment 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, provides for 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. The law does not permit public-sector employees such as civil servants, teachers, and nurses to form and join unions; however, they may join professional associations that have the right to bargain collectively but not the right to strike. No laws prohibit antiunion discrimination.

Although there are provisions for collective bargaining and the right to strike, 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.

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.

b. Prohibition of Forced or Compulsory Labor

The law prohibits forced or compulsory labor and states that any person who exacts, procures, or employs forced or compulsory labor is liable to a fine of 100 Australian dollars (A\$) (\$93).

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. A separate provision of law, however, 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 restrictions on the type of work that a child apprentice may perform and 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. The government did not have sufficient resources to monitor formally and enforce child labor law provisions, however, depending instead on communities to report offenses. Children rarely engaged in formal employment but did work in 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 the Department of Labor in the Ministry of Foreign Affairs, Trade, Tourism, Environment, 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 (\$2,804 to \$3,738). No recent poverty-level income figure was available, but this minimum salary barely sufficed to allow a worker and family in the wage economy to maintain a decent standard of living. Private-sector wages were reportedly somewhat lower than the minimum public-sector wage rate.

The law sets the workday at eight hours, and the Ministry of Foreign Affairs, Trade, Tourism, Environment, 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, there are no established premium overtime rates. 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, Trade, Tourism, Environment 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. 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 authorities impounded a fishing vessel after crewmembers reported they had not received remuneration during a non-fishing period, in violation of their labor contracts.