

TUVALU 2016 HUMAN RIGHTS REPORT

EXECUTIVE SUMMARY

Tuvalu is a constitutional parliamentary democracy. The parliamentary election held in March 2015 was generally free and fair, with three new members elected into the 15-member parliament. There were no formal political parties. Parliament selected Enele Sopoaga for a second term as prime minister.

Civilian authorities maintained effective control over the security forces.

There were human rights problems in a few areas. In particular, traditional customs and social patterns perpetuated discrimination against women and minority religious groups. Domestic violence remained a problem.

Impunity was not a problem, and there were no reports government officials committed human rights abuses.

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

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 politically motivated disappearances.

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

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

Traditional assemblies of local hereditary elders exercise discretionary punishment and disciplinary authority on each island, as defined in the Island Courts Act. 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

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

Physical Conditions: There were no deaths of inmates during the year.

Administration: The country does not have a formal ombudsperson who can act on behalf of prisoners and detainees, but the “people’s lawyer” (public defender) was available to respond to prisoner complaints. The government did not investigate or monitor prison conditions and did not receive any complaints or allegations of inhuman conditions.

Independent Monitoring: The government permits visits by independent human rights observers, but there were no visits during the year.

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 service, under the Office of the Prime Minister, maintains internal security. In addition to law enforcement, it maintains separate units for customs, immigration, maritime surveillance, and prisons. 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 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” an offense is about to be committed. Police estimated the majority of arrests were without warrant. Police may hold a person arrested without a warrant for a maximum of 24 hours without a hearing before a magistrate. When a court issues an arrest warrant, the warrant states the maximum permissible detention time before the court must hold

a hearing, 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 await trial at a semiannual session of the High Court. There was a functioning system of bail. A people's lawyer was available free of charge to arrested persons and for other legal advice. Persons living on outer islands did not have rapid access to legal services because the people's lawyer, based on the main island of Funafuti, traveled infrequently to the outer islands. The country had three attorneys in private practice.

Detainee's Ability to Challenge Lawfulness of Detention before a Court: The constitution protects persons from unlawful detainment and detainees may apply to the High Court for redress if they believe they were unlawfully detained.

e. Denial of Fair Public Trial

The law provides for an independent judiciary, and the government generally respected judicial independence. In February, Prime Minister Sopoaga appointed his personal counsel as chief justice. Although this was a legitimate appointment under the law, some government opponents criticized the prime minister's choice as cronyism.

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. Defendants have the right to be promptly informed and in detail of the charges, including free interpretation as necessary from the moment charged through all appeals; 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 all government-held evidence, and appeal any convictions. Defendants may not be compelled to testify or confess guilt, and have a right to appeal a judge's decision. The law extends these rights to all defendants.

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 through domestic courts.

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

The law prohibits such actions, and there were no reports the government failed to respect 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 press.

Press and Media Freedoms: Although there were no government restrictions, the government's Media Department controlled the country's sole radio station. There were no local private, independent media.

Internet Freedom

The government did not restrict or disrupt access to the internet or censor online content, and there were no credible reports the government monitored private online communications without appropriate legal authority. Internet access was available primarily on Funafuti, although connections were slow, expensive, and unreliable. According to the International Telecommunication Union, approximately 43 percent of the population had access to the internet in 2015.

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 authority to restrict religious activities of organizations deemed a threat to the values and culture of the island community or deemed divisive, unsettling, or offensive to the people. The government continued to protect the right to choose and practice religion freely but called for religious organizations to abide by island chiefs' restrictions on public worship and public religious group meetings. Religious minorities practiced openly in violation of the restrictions. There were no reports of arrests or fines.

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/religiousfreedomreport/.

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. Freedom to Participate in the Political Process

The law provides citizens the ability to choose their government through free and fair periodic elections held by secret ballot based on universal and equal suffrage.

Elections and Political Participation

Recent Elections: The parliamentary election held in March 2015 was generally free and fair, with three new members elected into the 15-member parliament. Parliament selected Enele Sopoaga for a second term as prime minister.

Political Parties and Political Participation: There were no formal political parties. Parliament tended to divide itself between an ad hoc faction with at least the minimum eight votes to form a government and an informal opposition faction.

Participation of Women and Minorities: The 15-member parliament included one woman. Participation by women in government and politics was limited, largely due to traditional perceptions of women's role in society. 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 corruption by officials, such as theft, and the government generally implemented the law effectively, but officials sometimes engaged in corrupt practices.

Parliament established the Office of the Attorney General to provide government oversight, to improve accountability, and improve performance of the public sector; however, it remained underfunded and lacked adequate staff to monitor corruption effectively. When needed, police also played a role in investigating charges of corruption.

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

Corruption: In May the court convicted Apisai Ielemia, prime minister from 2006-2010 and a serving member of parliament, on four counts of abuse of office and sentenced him to 12 months' imprisonment for misusing development assistance. The chief magistrate ruled Ielemia could serve the 12-month sentence only on weekends and he could continue to serve as a member of parliament. In September a stand-in judge in the High Court declared the conviction "manifestly unsafe," reversed the 12-month jail sentence, and ordered no retrial. Judge Franzi was the stand-in judge after the Attorney General's Office asked the chief justice to recuse himself from the case, due to his representation of Prime Minister Sopoaga in a previous corruption case.

Financial Disclosure: The law requires income and asset disclosure by public office holders. In 2014 the government appointed the first chief ombudsperson to a five-year term to implement the law on financial disclosure.

Public Access to Information: No law provides 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 the 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, composed primarily of faith-based 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 remained limited by 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. The institution had government support and could respond to requests for advice from the government. The government, together with the Secretariat of the Pacific Community Regional Rights Resource Team, facilitated training and reviewed its action plan in July to implement its human rights commitments under the Universal Periodic Review.

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

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 law recognizes domestic violence as a criminal offense. Under the law domestic violence offenses are punishable by a maximum of five years' imprisonment or a maximum fine of A\$1,000 (\$710), or both. 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.

Police have a Domestic Violence Unit, a “no-drop” evidence-based prosecution policy in cases of violence against women, and operate a 24-hour emergency telephone line for victims of domestic violence. 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 to that property, if a person at risk of further violence occupies it. The government has a Memorandum of Understanding with the Tuvalu National Council of Women for handling domestic violence cases. The Women's Crisis Center, operated by the women's council, provided counseling services, but there were no shelters for abused women. Cases of rape and domestic violence often went unreported due to lack of awareness of women's rights and traditional and cultural pressures on victims. According to United Nations Children's Fund data collected during a 10-year period (2002-12), 73 percent of men and 70 percent of women believed wife beating was justifiable.

Sexual Harassment: The law does not specifically prohibit sexual harassment but prohibits indecent behavior, including lewd touching. Reports of sexual harassment were uncommon, and there were no cases reported during the year.

Reproductive Rights: Couples and individuals have the right to decide the number, spacing, and timing of their children; manage their reproductive health; and have access to the information and means to do so, free from discrimination, coercion, or violence. The nongovernmental Tuvalu Family Health Association provided information and education about reproductive health 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: Aspects of the law contribute to an unequal status for women, for example in land inheritance and child custody rights. No laws prevent employment discrimination based on gender or require equal pay for equal work, and such discrimination occurred (see section 7.d.). Women held a subordinate societal position, constrained in some instances by both law and traditional cultural practices. Nonetheless, women increasingly held positions in the health and education sectors, headed a number of NGOs, and were more active politically.

There is a Department of Gender Affairs within the Prime Minister's Office.

Children

Birth Registration: A child derives citizenship at birth, whether born in the country or abroad, if either parent is a citizen. The law requires registration of births within 10 days, a practice generally observed.

Child Abuse: The government did not compile child abuse statistics, and there were no reports of child abuse during the year. Anecdotal evidence, however, indicated 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 indicated this occurred in schools and homes.

Early and Forced Marriage: The legal minimum age of marriage for both girls and boys is 16 years.

Sexual Exploitation of Children: The age of consent for sexual relations is 15 years. Sexual relations with a girl younger than 13 years carries a maximum punishment of life imprisonment. Sexual relations with a girl older than 12 but younger than 15 years carries a maximum penalty of five years' imprisonment. The victim's consent is irrelevant under both these provisions; however, in the latter case, reasonable belief the victim was 15 years 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. See the Department of State's *Annual Report on International Parental Child Abduction* at travel.state.gov/content/childabduction/en/legal/compliance.html.

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 during the year that Tuvalu was a source, destination, or transit country for victims of human trafficking.

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, access to health care, the judicial system, or the provision of other state services. Government services to address the specific needs of persons with disabilities were very limited. There were 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 of Tuvalu (FAA Tuvalu) (the 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 advocated 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. The FAA Tuvalu operated a separate school for children with disabilities in Funafuti. Parents make the decision concerning which school a child with disabilities attends after consultation with an FAA Tuvalu adviser.

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

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

Sexual conduct between men is illegal, with 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. The law does not specifically prohibit discrimination based on sexual orientation or gender identity. There are no hate crime laws, nor are there criminal justice mechanisms to aid in the prosecution of bias-motivated crimes against members of the lesbian, gay, bisexual, transgender, and intersex community. There were no reports of violence against persons based on sexual orientation or gender identity, but social stigma or intimidation may prevent reporting of incidents of discrimination or violence.

HIV and AIDS Social Stigma

Persons with HIV/AIDS faced some societal and employment discrimination (see section 7.d.). The government and NGOs cooperated to inform the public about HIV/AIDS and to 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 provides for the right of private-sector workers to form and join independent unions, bargain collectively, and conduct legal strikes. The law does not permit public-sector employees such as civil servants, teachers, and nurses to form and join unions. They may join professional associations that have the right to bargain collectively but not the right to strike. No laws prohibit antiunion discrimination or require reinstatement of workers fired for union activity.

In general the government effectively enforced these laws. By law employers who violate laws on freedom of association and the right to collective bargaining are liable to a maximum fine of A\$100 (\$75) depending on the violation, and in some cases imprisonment for a maximum of six months. These penalties were not sufficient to deter violations. The law also provides for voluntary conciliation, arbitration, and settlement procedures in cases of labor disputes. In general these procedures were not subject to lengthy delays or appeals.

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. There was only one registered trade union, the Tuvalu Overseas Seamen's Union. There were no reports of antiunion discrimination.

b. Prohibition of Forced or Compulsory Labor

The law prohibits all forms of forced or compulsory labor and states and the government effectively enforced the law. Anyone who exacts, procures, or employs forced or compulsory labor is liable to a fine of A\$100 (\$75), which was not sufficient to deter violations. There were no reports of forced labor during the year.

c. Prohibition of Child Labor and Minimum Age for Employment

The law prohibits children younger than 14 years from working in the formal labor market. The law also prohibits children younger than 15 years from industrial employment, and prohibits children younger than 18 years from entering into formal contracts, including work contracts. A separate provision of law, however, allows children 15 years or older to enter into apprenticeships for a maximum of five years, subject to approval by the commissioner of labor. There are restrictions on the type of work a child apprentice may perform, and he or she must receive a medical examination and be determined physically and mentally fit for employment in the specified occupation. Apprentices may lawfully live away from their families; in such cases, the contract must adequately provide for the supply of food, clothing, accommodation, and medical attention for the apprentice. There are no legal restrictions prohibiting girls or boys older than 15 years from working aboard ships, or during the night.

The government did not have sufficient resources to monitor or enforce child labor laws, and depended instead on communities to report offenses. By law anyone found violating provisions on the employment of children is liable for a A\$50 (\$37.50) fine, which was not sufficient to deter violations. Children rarely engaged in formal employment but did work in subsistence fishing. The government does not collect or publish data on child labor.

Also see the Department of Labor's *Findings on the Worst Forms of Child Labor* at www.dol.gov/ilab/reports/child-labor/findings/.

d. Discrimination with Respect to Employment or Occupation

Labor laws and regulations do not prohibit discrimination based on race, color, sex, religion, political opinion, national origin, age, disability, language, sexual orientation, gender identity, HIV or other communicable disease status, or social status, and these persons sometimes experienced discriminatory practices. Women suffered discrimination in employment and wages. 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. Local agents of foreign companies that hired local seafarers to work abroad also barred persons with HIV/AIDS from employment.

e. Acceptable Conditions of Work

The law provides for the government to set a minimum wage. As of November, however, the Department of Labor in the Ministry of Foreign Affairs, Environment, Trade, Labor, and Tourism had not done so. The minimum annual salary in the public sector was A\$5,300 to A\$7,400 (\$4,000 to \$5,600). No recent poverty-level income figure was available. According to the Department of Labor, the 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, Environment, Trade, Labor, and Tourism may specify the days and hours of work for workers in various industries. Government employees were entitled to paid annual holidays. Although there is provision in the law for premium pay and hours of work for overtime work, there are no established premium overtime rates or maximum hours of work. The law provides for rudimentary health and safety standards and requires employers to provide adequate potable water, basic sanitary facilities, and medical care. Workers can remove themselves from situations that endanger health or safety without jeopardy to their employment, and authorities effectively protected employees in this situation.

Enforcement of standards in all sectors, including the informal economy, was inconsistent. By law penalties for violations of laws related to acceptable conditions of work could be liable to a maximum fine of A\$100 (\$75) depending on the violation, or imprisonment for a maximum of six months if the person failed to pay an imposed fine. These penalties were adequate to deter violations. The Ministry of Foreign Affairs, Environment, Trade, Labor, and Tourism 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 two officers, which was not sufficient to enforce compliance. The labor officers relied on information from the community and conducted inspections when the office received complaints.

Approximately 75 percent of the working-age population lacked permanent employment and worked in the informal and subsistence economy. There was no system for reporting and publishing workplace injuries or deaths.